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Legal representative of commercial legal entity committing a crime: theoretical and practical issues in Vietnam

Thi Ngoc Kim Tran^{1,*}

Dalat University

Hao Van Le²

Procuratorate University

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Abstract: The criminal liability of legal representatives in commercial entities under Vietnamese law presents complex theoretical and practical challenges, particularly as the 2015 Penal Code (amended 2017) formally introduced corporate criminal liability for the first time. This article analyses the legal framework surrounding the representation of commercial legal entities in criminal proceedings under Vietnamese law. The article discusses the role of the legal representative in protecting the rights and interests of legal entities, highlighting significant issues such as the rigid limitation to "legal representatives" in proceedings, challenges in appointing a representative when none is available, and the absence of detailed

¹ Ph.D, Faculty of Law DaLat University, Vietnam. <http://orcid.org/0009-0009-7957-8799>. E-mail: kimtt@dlu.edu.vn (corresponding author).

² Ph.D, Procuratorate University, Vietnam. <http://orcid.org/0009-0003-9266-2385>. E-mail: haolv_t3@vks.gov.vn

regulations on the rights and obligations of representatives during criminal investigations. Suggestions for improvement include expanding the scope of representatives allowed in proceedings, adding legal provisions for temporary appointments, and defining the representative's procedural rights. These proposals aim to address current legislative gaps and enhance the effectiveness of criminal proceedings involving legal entities in Vietnam.

Keywords: Legal Representative, Legal Entity, Commercial Legal Entity, Criminal Proceedings, Vietnamese Law, Corporate Liability

1. Introduction

According to traditional perspectives, a crime is the unity of two elements: objective and subjective. Objectively, it refers to human actions that pose a significant danger to society. Subjectively, such actions must be associated with an internal subjective attitude (fault element) of the offender. Therefore, until the adoption of the 2015 Penal Code Vietnam's criminal law only recognized individuals as the subjects of crimes, as only humans could meet these two conditions³. Consequently, criminal liability was only applied to individuals (natural persons), and there were no provisions for holding legal entities (juridical persons) criminally liable. In the past, under the planned economy, legal entities were primarily public entities (state-owned enterprises producing goods according to state plans). As such, the absence of provisions for considering the legal liability of legal entities was relatively acceptable. Today, in a socialist-oriented market economy and within the context of international integration, Vietnam has a diverse array of enterprises with various ownership structures and capital sources, producing goods for different purposes.

Many legal entities, particularly profit-driven economic organizations, have increasingly engaged in legal violations, causing harm to the interests of the State, society, and individuals. Therefore, in addition to other forms of legal liability such as administrative responsibility and civil liability for compensation, it is essential to establish provisions for criminal liability for legal entities. This is necessary to address dangerous acts committed by legal entities that harm the interests of individuals, agencies, and organizations. Currently, the criminal liability of legal entities is a global trend, with 119 countries worldwide establishing provisions for the accountability of legal entities. In practice, socially dangerous acts may be caused by legal entities as a result of wrongful decisions. Certain crimes can also be committed by individuals or organizations⁴. Therefore, the issue of legal entities and their criminal liability needs to be considered. This has already been addressed in Vietnam's 2015 Penal Code, as amended and supplemented in 2017, 2025 (PC).

However, there is still a lack of consensus regarding the concept of legal entities, their criminal liability, and the responsibilities of individuals, agencies, and organizations in preventing and combating crimes committed by legal entities. Several provisions remain problematic, particularly the procedures for prosecuting commercial legal entities through their legal representatives. Despite the growing scholarship on corporate criminal liability in the PC, existing studies have largely concentrated on the substantive scope of corporate offences and attribution theories, while the procedural architecture of representation has received far less

³ LONG, N. T. Completing the provisions on criminal liability of commercial legal entities committing crimes in the Criminal Code 2015. *Jurisprudence Journal*, 2025. Available at: <https://tapchitoaan.vn/hoan-thien-quy-dinh-cua-phap-luat-ve-trach-nhiem-hinh-su-cua-phap-nhan-thuong-mai-trong-bo-luat-hinh-su-nam-201512802.html> (accessed on 2 August 2025).

⁴ ELEZI, A. Criminal liability of legal entities. *Balkan Journal of Interdisciplinary Research*, 2024, 10(3), 71-83.

systematic attention. In particular, the legal and practical consequences of limiting criminal proceedings to the "legal representative" under Article 434 of the PC remain under-theorized and under-documented. This gap becomes more visible when Article 434 is read together with the Law on Enterprises 2020 and the 2015 Civil Code, which recognize broader representative mechanisms in civil and commercial relations. The mismatch between these regimes raises recurring difficulties in practice, especially when the designated legal representative is unavailable, implicated, or when an entity has multiple legal representatives.

To enhance the effectiveness of prevention and combat against crimes committed by legal entities, this article discusses certain legal issues related to the legal representatives of commercial legal entities in the context of Vietnam's specific circumstances. Based on this analysis, recommendations for improving the legal framework are proposed.

To address the above-mentioned issues, this article examines and analyses the following research questions: (i) How does the current Vietnamese legal framework regarding the representation of commercial legal entities in criminal proceedings affect the protection of their procedural rights and interests? (ii) What specific legislative amendments could effectively address existing challenges related to the legal representative of enterprises?

Existing Vietnamese scholarship on corporate criminal liability has predominantly examined the substantive conditions for attributing liability to commercial legal entities, while the procedural architecture that enables entities to exercise defence rights remains underexplored. This article addresses that gap by analysing the structural consequences of restricting criminal proceedings to the "legal representative" under Article 434 of the PC, read in conjunction with the broader representative mechanisms recognised in the Civil Code 2015 and the Law on Enterprises 2020. The novelty of the study lies in its integrated approach: it conceptualises procedural representation as a core safeguard within a dual-track liability framework, and systematically identifies three normative bottlenecks exclusive reliance on legal representatives, ambiguity in appointment when no representative exists or when multiple representatives coexist, and the insufficient specification of procedural powers during investigation. The article therefore contributes both doctrinally, by clarifying the internal logic of representation in Vietnam's emerging corporate liability regime, and practically, by proposing criteria-based legislative adjustments aimed at preventing procedural deadlock and strengthening effective corporate defence. This procedural focus is timely in comparative terms: recent reforms and debates in common-law jurisdictions have widened attribution beyond directors to senior managers and have renewed discussion of whether collective knowledge may, in narrow circumstances, ground corporate mens rea^{5,6,7}. Parallel scholarship also underscores that holistic models such as corporate culture and systems intentionality should be treated as practical regulatory tools, not merely theoretical alternatives⁸.

2. Lecturer review

Corporate criminal liability refers to the attribution of criminal responsibility to business entities for unlawful acts committed within or through the organization.

⁵ HORDER, J. Corporate criminal liability under the Economic Crime and Corporate Transparency Act 2023. *Legal Studies*, 2025, 45(1), 133-148.

⁶ KINGDOM, U. Economic Crime and Corporate Transparency Act 2023 (c. 56). In., 2023. Available at: <https://www.legislation.gov.uk/ukpga/2023/56> (accessed on 2 August 2025).

⁷ SARCH, A. Collective Knowledge and the Limits of the Expanded Identification Doctrine. *Oxford Journal of Legal Studies*, 2024, 44(4), 920-948.

⁸ BANT, E. FAUGNO, R. Corporate Culture and Systems Intentionality: part of the regulator's essential toolkit. *Journal of Corporate Law Studies*, 2023, 23(2), 345-374.

Unlike individual liability, imputing fault to a corporation requires doctrinal tools to connect diffuse decision-making structures and internal policies with a legally relevant "corporate mind" or "corporate fault". Comparative scholarship has identified a series of models such as the identification doctrine, aggregation theory and organisational/"corporate culture" fault that attempt to explain when and how a legal person may be held criminally liable.^{9,10} More recent work shows that sanctions are no longer limited to fines: jurisdictions increasingly combine traditional penalties with compliance-oriented measures such as mandatory compliance programmes, monitoring and governance reforms as tools to either mitigate or exculpate corporate liability.¹¹ These international developments provide the general theoretical background for analysing the position of the legal representative when a commercial legal entity is prosecuted.

In Vietnam, the recognition of corporate criminal liability is a relatively recent development. The PC officially introduced criminal responsibility for "corporate legal entities" (juridical persons) and set out the general conditions for liability in Articles 74-76, thereby aligning Vietnamese law with the global trend of holding legal entities criminally accountable. Scholarly analyses emphasise that this was the first time Vietnamese criminal law imposed liability on commercial legal entities and that the Code limits corporate criminal responsibility to a closed list of offences, mainly in the economic and environmental fields.^{12,13} These studies underline both the progressive nature of the reform and its unresolved problems, especially the conceptual basis of corporate fault, the classification of offences and the coordination between individual and corporate liability.

Within this framework, the legal representative becomes the central procedural "interface" between the commercial legal entity and the criminal justice system. The Criminal procedure code 2015 (CPC) provides that all procedural activities vis-à-vis a juridical person shall be conducted through its at-law representative (Article 434-CPC), and sets out basic rights and obligations of that representative in Articles 435 and related provisions. However, doctrinal commentary has pointed out that these provisions remain general and do not sufficiently clarify who may act as legal representative in complex situations (for example, when the chair of the board and the general director are themselves prosecuted, or when the entity has multiple potential representatives), nor do they clearly distinguish between the representative's procedural role and the personal criminal liability of managers¹⁴. Against this backdrop, the article argues that Vietnamese law still lacks a coherent and detailed regime on the status, rights and responsibilities of legal representatives of commercial legal entities in criminal proceedings, and that this gap has direct implications for both corporate accountability and procedural fairness.

⁹ LEDERMAN, E. Models for imposing corporate criminal liability: from adaptation and imitation toward aggregation and the search for self-identity. *Buffalo Criminal Law Review*, 2000, 4(1), 641-708.

¹⁰ DE MAGLIE, C. Models of corporate criminal liability in comparative law. *Wash. U. Global Stud. L. Rev.*, 2005, 4, 547.

¹¹ KOTLÁN, P., M. ONDRÚŠ, A. KOZLOVÁ, I. KOTLÁN, et al. Criminal compliance program as a tool for criminal liability exculpation of legal persons in the Czech Republic. *Laws*, 2023, 12(2), 20.

¹² NAM, B. S. Criminal Liability of Commercial Legal Entity in Vietnamese Law. In XIV European-Asian Law Congress" The Value of Law"(EAC-LAW 2020). Atlantis Press, 2020, p. 54-58.

¹³ HUNG, N., M. VAN THANG AND T. T. HANH The Criminal Liability of Commercial Legal Entities in the Current Criminal Code of Vietnam. *Prawo i Więz*, 2022, 2 (40), 185-198.

¹⁴ DO THI, P. Criminal prosecution against the crime of legal entities in Vietnam. *VNU Journal of Science: Legal Studies*, 2023, 39(1).

3. Research methodology

This study combines doctrinal legal analysis with descriptive use of official statistics and case studies. First, it examines the relevant provisions of the PC, the CPC, the Civil Code 2015 and the Law on Enterprises 2020, together with guiding documents and Vietnamese doctrinal writings, in order to clarify the legal status and procedural role of legal representatives of commercial legal entities. Secondly, it uses publicly available statistical reports of the Ministry of Public Security and the Supreme People's Procuracy for the period 2018-2024 to illustrate broader trends in economic crime and the relatively limited number of cases in which commercial legal entities have actually been prosecuted. Finally, it analyses several illustrative cases in which commercial legal entities were prosecuted or investigated, focusing on the practical difficulties that investigative bodies encountered when summoning or identifying legal representatives and on the consequences of those difficulties for the progress of the proceedings.

4. Theoretical framework

4.1. Legal doctrines on the criminal liability of commercial legal entities

The "Identification Liability" Doctrine establishes the criminal liability of legal entities based on the actions of senior individuals or decision-makers within the organization.¹⁵ According to this doctrine, a legal entity is only held criminally liable when the offense is committed by individuals with decision-making authority or who act as the entity's legal representatives.¹⁶ These individuals are considered the "mind" of the legal entity, and thus, their actions are deemed the actions of the entity itself. The doctrine does not extend the criminal liability of a legal entity to the actions of lower-level employees or those without decision-making authority. The connection between the actions of an individual and the legal entity is established only when the individual commits the offense within the scope of their authority and for the benefit of the entity¹⁷. This doctrine has been primarily developed within common law systems, particularly in the United Kingdom. One landmark case that established this doctrine is *Tesco Supermarkets Ltd v. Nattrass* (1972). In this case, the UK court ruled that the criminal liability of a legal entity arises only when the offense is committed by an individual occupying a senior leadership or managerial role. Recent statutory reform in the United Kingdom has partially moved beyond the classic director-focused identification approach by extending identification to specified economic crimes committed by "senior managers", thereby widening the class of individuals whose conduct may count as the company's own act.^{18,19} Contemporary scholarship further argues that expanded identification still leaves attribution gaps where culpable informational manipulation prevents any individual from forming the full mens rea, and proposes a carefully limited role for collective knowledge in corporate attribution.²⁰

The "Corporate Culture" Doctrine focuses on determining the criminal liability of legal entities based on their internal culture and organizational management mechanisms. This doctrine posits that a legal entity can be held liable if its internal

¹⁵ PARSONS, S. The Doctrine of Identification, Causation and Corporate Liability for Manslaughter. *The Journal of Criminal Law*, 2003, 67(1), 69-81.

¹⁶ GOBERT, J. AND M. PUNCH *Rethinking Corporate Crime*. Edition ed. United Kingdom: Cambridge University Press, 2003.

¹⁷ ORMEROD, D., SMITH, J. C., LAIRD, K. Smith, Hogan, and Ormerod's *Criminal Law* (16th edn). Edition ed.: Oxford University Press, 2021. ISBN 9780198849704.

¹⁸ KINGDOM, U. 2023. *Ibid.*

¹⁹ HORDER, J. 2025. *Ibid.*

²⁰ SARCH, A. 2024. *Ibid.*

cultural environment encourages or facilitates unlawful behavior. Liability is not limited to the actions of individuals but also depends on the entity's policies, procedures, and internal governance practices. The doctrine emphasizes that a legal entity bears criminal responsibility for offenses committed by its members if the entity is at fault for creating conditions that allowed the offense to occur.²¹ This includes failing to establish or maintain effective internal controls to prevent violations. The "Corporate Culture" doctrine has been widely recognized and developed in Australia through the Criminal Code Act 1995, particularly under Section 12.3. This provision represents a significant advancement in expanding the scope of corporate criminal liability. The doctrine has been applied in major cases involving environmental violations, anti-money laundering, and corruption.²² Recent comparative work emphasises that "corporate culture" should not be treated as a marginal concept; rather, it can operate as an 'essential toolkit' for regulators in complex corporate cases, and has been analysed alongside "systems intentionality" as a holistic model of corporate fault.²³

The "Vicarious Liability" Doctrine establishes the foundation of criminal liability for legal entities based on the actions of employees, workers, or individuals under the management of the entity. According to this doctrine, a legal entity can be held criminally liable for the criminal acts of its employees. In the legal systems of the United Kingdom and the United States, this doctrine was initially developed in the realm of civil liability and later extended to the criminal sphere. It is a part of the common law tradition, where a legal entity is regarded as an independent legal person responsible for the actions of those operating within its structure. A notable example is the case of *New York Central & Hudson River Railroad Co. v. United States* (1909) in the United States, where the Supreme Court applied this principle to hold the railroad company criminally liable for bribery committed by its employee. This ruling laid the groundwork for the application of the "Vicarious Liability" doctrine in criminal cases involving legal entities.²⁴

The "Realist Entity" Doctrine views a legal entity as an independent legal person, possessing its own will and actions, separate from those of its representatives or employees. According to this doctrine, a legal entity is recognized as an independent subject within the legal system, capable of bearing criminal responsibility akin to that of a natural person. This doctrine was profoundly analyzed by the German legal philosopher Otto von Gierke, who delved into the nature of legal entities as independent entities. Gierke argued that legal entities are not merely "legal instruments" but are entities with their own will, shaped by the principles and internal mechanisms of the organization.²⁵ The "Realist Entity" doctrine has been developed by legal theorists within European legal systems. In France, the Criminal Code (1994) officially recognized the criminal liability of legal entities, based on the principles of the Realist Entity doctrine. Article 121-2 of the French Criminal Code stipulates that legal entities are liable for criminal offenses committed on their behalf and for their benefit.

²¹ DO, T. V. Doctrines on the Basis of Criminal Liability of Legal Entities. *Journal of State and Law*, 2021, 45. Available at: <https://danchuphaphuat.vn/co-so-thuc-tien-cua-viec-quy-dinh-trach-nhiem-hinh-su-cua-to-chuc-phap-nhan-3537.html> (accessed on 2 August 2025).

²² Clough, J. A., Mulhern, C. *The prosecution of corporations*. Jonathan Clough, Carmel Mulhern. Edition ed. United Kingdom: Oxford University Press, 2022. ISBN 0195506456.

²³ BANT, E., 2023. *Ibid*.

²⁴ KHANNA, V. S. Corporate Criminal Liability: What Purpose Does It Serve? *Harvard Law Review*, 1996, 109(7), 1477-1534.

²⁵ PATTERSON, J. L. The development of the concept of corporation from earliest roman times to a.D. 476. *The Accounting Historians Journal*, 1983, 10(1), 87-98.

Under the Alter Ego theory^{26,27}, the acts and mental state of certain senior managers are treated as the acts and mind of the corporation itself, so that the intention, knowledge and negligence of those who effectively control the company's affairs are directly attributed to the legal entity rather than requiring proof of a separate "corporate culture". Corporate criminal liability is thereby narrowed to decisions taken at the top of the organisation, while the legal representative and other key managers are effectively constructed as the "corporate mind". By contrast, under Aggregation theory²⁸ the corporation's mens rea is built by combining the knowledge and actions of several employees; even if no single individual possesses all elements of the offence, liability may still arise where fragmented pieces of information, held by different agents, when aggregated, demonstrate that "the corporation knew" or "the corporation intended" the unlawful result. Although this approach better reflects complex corporate structures, it has been criticised for potentially stretching the principle of personal culpability when no individual actor satisfies all elements of the offence. Considered alongside identification, vicarious liability and corporate culture models, Alter Ego and Aggregation theories together map a spectrum of possible bases for corporate criminal liability and offer important conceptual foundations for attributing criminal responsibility to legal entities. However, a commercial legal entity is not a tangible being and all of its activities must in practice be carried out through natural persons, in particular its legal representatives. This principle is reflected in Article 74 of the 2015 Civil Code, which provides that legal entities independently participate in legal relations in their own name. Consequently, in criminal cases involving commercial legal entities, the participation of the legal representative in procedural activities is indispensable to ensure that the entity is properly represented in criminal proceedings.

Although Vietnamese law does not expressly endorse any single attribution doctrine, the combined design of Articles 74–76 PC (conditions for corporate liability) and the dual-track clause in Article 75(2) PC tends, in practice, to channel corporate culpability through senior management decisions and the conduct of persons who represent or control the entity. This operational tendency is closest to an identification-style logic, while remaining formally distinct from purely vicarious liability. The consequence is procedural: if the legal representative is treated as the corporation's primary interface and, implicitly, the 'corporate mind', then restricting proceedings to the legal representative under Article 434 CPC becomes not only a technical rule of representation but also a structural determinant of how corporate fault is constructed and contested during investigation and trial. This is why clarifying who may represent the entity, and with which procedural powers, is central to both accountability and effective defence in Vietnam's corporate criminal liability regime. Comparative reform experience indicates that once attribution is widened whether via expanded identification, culture-based models, or failure-to-prevent offences procedural representation becomes even more consequential, because the entity's ability to contest or demonstrate organisational fault depends on who may speak for it and with which procedural powers.

²⁶ SCHUTZ, A. Sartre's theory of the alter ego. In *Collected Papers I: The Problem of Social Reality*. Springer, 1962, p. 180-203.

²⁷ SCHÜTZ, A. Scheler's theory of intersubjectivity and the general thesis of the alter ego. *Philosophy and Phenomenological Research*, 1942, 2(3), 323-347.

²⁸ STRATECHERY. Aggregation Theory. In., 2015, vol. 2024. Available at: <https://stratechery.com/2015/aggregation-theory/> (accessed on 2 August 2025).

4.2. Legal representative of a commercial legal entity and concurrent criminal liability

4.2.1. Legal representative of a legal entity in criminal proceedings

In Vietnam, prior to the promulgation of the PC, unlawful acts committed by legal entities, depending on their nature and severity, were addressed administratively if minor. If such acts showed signs of criminal offenses, criminal proceedings were initiated against the individuals involved rather than the legal entity itself. Since the enactment of the PC, commercial legal entities can be held criminally liable for 33 specified offenses, primarily economic crimes (such as smuggling, tax evasion) and environmental crimes (such as pollution).

Administrative liability for legal entities applies when violations are committed by their legal representatives, authorized persons, or employees within the scope of assigned duties, provided these violations fall within the scope defined by law for administrative penalties. The primary sanction for administrative violations is monetary fines, with penalties for legal entities being twice as high as those imposed on individuals for identical violations. Additional penalties may also apply, including confiscation of material evidence and means used in the violation, suspension of business operations, or prohibition from engaging in certain activities for a specified period. Remedial measures may include restoring original conditions, relinquishing illicit profits obtained from the violation, or other corrective actions to address damages.²⁹

Administrative and criminal liabilities for commercial legal entities intersect and can transform depending on the classification and escalation of the violation. Certain administrative violations may evolve into criminal offenses if their severity escalates or in cases of recurrence. For instance, a company violating labor safety regulations may initially face administrative penalties if the damage is minor; however, if the violation leads to death or significant damages, the entity may be subject to criminal liability under Article 236 of the PC regarding "Violations of Occupational Safety Regulations.

When criminal acts committed by a commercial legal entity are identified, the competent procedural authority must issue a decision to initiate a criminal case and conduct investigative measures in accordance with statutory provisions. However, as a legal entity is not a tangible entity, it cannot directly participate in procedural activities. To address this, Article 434 of the Criminal Procedure Code 2015 (CPC), stipulates that the legal representative of the commercial legal entity must participate in criminal proceedings. This ensures the protection of the legal entity's rights and interests during the investigation, prosecution, and trial phases (The Article 434, CPC)³⁰. At the same time, they have the rights and obligations as stipulated in Article 435 of the CPC. The distinction between administrative and criminal liability is not always clear, particularly in cases involving financial or environmental violations. For example, an enterprise that evades taxes totaling less than VND 100 million may face administrative sanctions under Decree 125/2020/NĐ-CP. However, if the enterprise had previously been administratively sanctioned for evading taxes amounting to VND 50 million and subsequently commits another violation involving an additional VND 50 million, criminal

²⁹ HOA, N. N. Consistency Among Provisions On Criminal Responsibility Of Commercial Legal Entities Under The 2015 Criminal Code. Hanoi Law Review, 2017, 3. Available at: <https://sti.vista.gov.vn/publication/view/consistency-among-provisions-on-criminal-responsibility-of-commercial-legal-entities-under-the-2015-criminal-code-6f28f35b1a24470c108b2eff26cc762f-291581.html> (accessed on 2 August 2025).

³⁰ NATIONAL ASSEMBLY. Criminal procedure code. In Library Law. 2015. Available at: <https://thuvienphapluat.vn/van-ban/Thu-tuc-To-tung/Van-ban-hop-nhat-46-VBHN-VPQH-2025-Bo-Luat-To-tung-hinh-su-647146.aspx> (accessed on 2 August 2025).

proceedings may be initiated under Article 200 of the PC for "Tax Evasion." This illustrates that the relationship between these two types of liability is continuous, with thresholds for transformation depending on specific regulatory provisions and the circumstances of each case.

However, the CPC and its guiding documents do not clearly define who qualifies as the legal representative of a commercial legal entity involved in criminal acts. This issue requires reference to the Law on Enterprises 2020 and the Civil Code 2015, which serve as foundational legal texts to understand the legal status and representative mechanisms within Vietnam's legal framework. According to Clause 1, Article 12 of the Law on Enterprises 2020, "The legal representative of an enterprise is an individual who represents the enterprise in exercising its rights and obligations arising from the enterprise's transactions, represents the enterprise as the claimant, respondent, or person with related interests and obligations before arbitration or court, and exercises other rights and obligations in accordance with the law." Furthermore, based on the provisions of this article and Article 137 of the Civil Code 2015, the legal representative of an enterprise is defined as the individual recorded in the enterprise registration certificate, as stipulated in the company's charter, or as appointed by the court during legal proceedings. However, depending on the type of enterprise (limited liability company, joint-stock company, partnership), the legal representative may hold positions such as General Director/Director, Chairperson of the Board of Directors/Chairperson of the Members' Council. For partnerships, the legal representative must be a general partner, who bears unlimited and joint liability for the company's obligations. This role is not merely nominal but also encompasses the responsibility of representing the commercial legal entity in compliance with legal provisions in critical legal relationships. This underscores that the role of the legal representative is not just symbolic but serves as the legal centerpiece, bearing responsibility before the law.

When the legal representative of a commercial legal entity participates in criminal proceedings, they must provide the competent procedural authority with information such as their full name, date of birth, nationality, ethnicity, religion, gender, occupation, and position. If any of these details change, the legal representative is required to immediately notify the competent procedural authority. In cases where the legal representative of a commercial legal entity is subject to prosecution, investigation, indictment, trial, or is otherwise unable to participate in the proceedings, the legal entity must appoint another individual as its legal representative for the proceedings. If the legal entity changes its legal representative, it must promptly notify the competent procedural authority of this change.

4.2.2. Concurrent criminal liability of commercial legal entities and their legal representatives

Clause 2 of Article 75 of the PC provides that "the criminal liability of a commercial legal entity does not exclude the criminal liability of individuals". This provision confirms that Vietnamese law adopts a dual-track model of liability, in which the corporate legal entity and the natural person may both be prosecuted for the same offence. In doctrinal terms, this model sits between purely derivative liability, where the entity's guilt depends entirely on the conviction of an individual agent, and purely independent liability based on corporate culture or organisational fault. Vietnamese law still requires that the offence be committed "on behalf of" and "for the benefit of" the entity, but corporate liability does not automatically collapse if proceedings against managers or legal representatives fail. In practice, however, investigative bodies often treat the legal representative as the "primary" offender and the entity as an extension of that person, which tends to blur the conceptual distinction between individual and corporate fault and reinforces an

identification-style approach. A clearer legislative and doctrinal articulation of concurrent liability would help procedural bodies decide when to prosecute only the entity, only the representative, or both, in a manner consistent with the principles of personal culpability and proportionality.

5. Practical aspects of prosecuting commercial legal entities for criminal offenses in Vietnam

5.1 Research findings

These general statistics on crime and economic offences are not presented for their own sake, but because they define the practical environment in which rules on corporate liability and representation operate. Economic and environmental crimes remain a significant component of overall offending, and many of them are committed "through" commercial legal entities. Yet, as Table 3 shows, the number of cases in which commercial legal entities are actually prosecuted is extremely small compared with the scale of economic crime, which suggests that procedural and conceptual barriers including unclear rules on legal representatives may be inhibiting the effective use of corporate criminal liability.

According to the Ministry of Public Security³¹, the nationwide crime situation exhibited complex developments (see Table 1). The total number of criminal offenses during this period fluctuated significantly, from 49,860 cases in 2019, decreasing to 41,807 cases in 2021, before rising again to 61,701 cases in 2024. The increase in 2024 may be attributable to multiple factors, including the rise of high-tech crimes and changes in socio-economic conditions. The investigation and crime detection efforts have shown positive progress over the years. The crime clearance rate has generally remained high, ranging from 75.56% to 84.94%. This reflects the effectiveness of law enforcement agencies in conducting investigations, apprehending offenders, and handling criminal cases (See tables 1-2).

Table 1. National crime statistics.

Year	Total cases nationwide	Cases solved	Individuals prosecuted	Average clearance rate (%)	Criminal gangs dismantled	Economic crime cases
2019	49,860	39,868	78,329	83.12	2,072	14,031
2020	43,546	36,784	75,864	84.72	1,364	5,741
2021	41,807	35,425	72,810	84.91	1,324	4,743
2022	42,994	36,445	75,007	84.94	640	6,143
2023	49,427	40,118	79,804	81.35	140	4,423
2024	61,701	44,463	89,327	75.56	105	4,815

Source: Authors' compilation based on the Ministry of Public Security's Reports on Crime Prevention and Law Violations.

Table 2. National economic crime statistics.

Year	Total cases nationwide	Economic crime cases	Economic crime rate (%)
2019	49,860	14,031	28.14
2020	43,546	5,741	13.18
2021	41,807	4,743	11.34
2022	42,994	6,143	14.28

³¹ MINISTRY OF PUBLIC SECURITY. Crime Prevention and Control Statistics. In., 2018-2024. Available at: <https://bocongan.gov.vn/tintuc/Pages/thong-ke.aspx?Cat=100> (accessed on 2 August 2025).

Year	Total cases nationwide	Economic crime cases	Economic crime rate (%)
2023	49,427	4,423	8.94
2024	61,701	4,815	7.8

Source: Authors' compilation based on the Ministry of Public Security's Reports on Crime Prevention and Law Violations.

5.2. Economic crime trends

From 2019 to 2024, economic crime in Vietnam experienced a significant decline, shaped by economic conditions, regulatory measures, and evolving criminal tactics. In 2019, economic crime peaked at 14,031 cases, accounting for 28.14% of all reported offenses. This period saw widespread fraudulent trade practices, corruption, and financial violations, fueled by rapid economic growth coupled with weak regulatory oversight. The absence of stringent financial controls created opportunities for financial misconduct to thrive.

By 2020, total criminal cases dropped significantly to 43,546, with economic crime cases plummeting to 5,741, constituting 13.18% of all offenses. This sharp decline was largely due to the COVID-19 pandemic, which disrupted business activities, reduced financial transactions, and slowed commercial operations ultimately decreasing opportunities for economic crime. However, this period also witnessed a surge in cyber-enabled financial fraud and online scams, reflecting a shift in criminal methodologies.

In 2021, total criminal offenses continued to decline to 41,807, with economic crime cases dropping further to 4,743 (11.34%). Despite the decline, the crime clearance rate peaked at 84.91%, underscoring the effectiveness of investigation, prosecution, and enforcement efforts. This period marked a crucial phase in strengthening financial oversight and post-pandemic economic monitoring, contributing to a significant reduction in financial violations.

However, in 2022, economic crime witnessed a resurgence alongside post-pandemic economic recovery. The total number of criminal cases increased to 42,994, with economic crime cases rising to 6,143 (14.28%). The revival of business activities led to an increase in fraudulent trade practices, smuggling, and corruption. The growing complexity of financial crimes demanded stricter regulatory interventions and enhanced enforcement mechanisms.

In 2023, while the total number of criminal cases climbed to 49,427, economic crime cases saw a substantial decline to 4,423, representing only 8.95% of all offenses. This sharp drop was likely driven by tightened financial regulations, stricter corporate audits, and aggressive anti-corruption enforcement. Despite this progress, online financial fraud remained prevalent, posing new challenges for authorities in preventing and combating digital economic crimes.

By 2024, the number of economic crime cases stood at 4,815, more than three times lower than the peak in 2019, reflecting the long-term effectiveness of financial oversight measures and anti-corruption efforts. However, compared to 2023 (4,423 cases), there was a slight increase, indicating that financial misconduct persists, especially in digital finance and e-commerce sectors. This trend suggests that while Vietnam has made substantial progress in curbing traditional economic crimes through strict financial controls and enforcement, the rise of digital financial fraud presents a growing challenge, requiring continuous adaptation to new crime patterns and technological advancements in regulatory oversight.

The provision of criminal liability for commercial legal entities committing socially dangerous acts is a new regulation introduced in 2017. To assess the effectiveness of implementing legal provisions on the criminal liability of commercial legal entities in combating and preventing crimes committed by these entities, we

must first examine the handling of crime reports, denunciations, and prosecution recommendations involving commercial legal entities from 2018 to 2023. This is illustrated in Table 3.

Table 3. Number of crime reports related to commercial legal entities received and prosecuted from 2018 to 2023.

	2018	2019	2020	2021	2022	2023	2024	Total
Crime reports related to commercial legal entities received	0	01	01	01	0	03	03	10
Crime reports related to commercial legal entities prosecuted	0	01	01	01	0	02	01	06

Source: Authors' compilation based on the Department of Crime Statistics and Information Technology, Supreme People's Procuracy of Vietnam.

In practice, many commercial legal entities in Vietnam, driven by profit, have colluded to commit various unlawful acts of a criminal nature, such as tax evasion, illegal business operations, speculation, and smuggling. Additionally, for local interests, some entities have failed to take legally mandated measures to protect the environment, causing severe consequences. Crimes committed under the guise of legal entities are on the rise, with increasingly dangerous characteristics.

In recent years, the number of criminal violations committed by legal entities has been growing, including smuggling, trading prohibited goods, commercial fraud, illegal business activities, violations of industrial property rights, and crimes in the securities sector. Most of these cases involve senior management or legal representatives acting for the benefit of the legal entity or within its operational scope. These offenses are becoming increasingly sophisticated, deceitful, highly organized, and, in some cases, international in nature, causing significant damage to the economy, society, and people's lives. This situation calls for strong preventive and combative measures. However, crimes committed by commercial legal entities have been infrequently detected in recent years. This can be attributed to several factors, with one key reason being that the regulations governing such cases are relatively new to legal practice. Additionally, certain inadequacies in the regulations have led to hesitation among state authorities in prosecuting, investigating, and indicting. The legal inadequacies will be further analyzed and discussed by the author in the subsequent sections, for example:

The Investigation Department of Phu Tho has initiated prosecution, indictment, and adjudication of a case concerning the offense of "Infringement of Industrial Property Rights," involving defendant Vu Van Phu (born in 1972, residing in Dich Vong Ward, Cau Giay District, Hanoi) and Vietnam-France Aluminum Joint Stock Company Vietnam-France Aluminum Factory (Nhôm Việt Pháp), headquartered in Hanoi. This case is recognized as the first criminal case in Phu Tho Province in which a commercial legal entity has been prosecuted pursuant to the new provisions of the PC. The case was uncovered in April 2019 when the Phu Tho Police seized over 42,000 aluminum extrusion bars (approximately 170 tons) suspected of industrial property rights infringement at the Vietnam-France Aluminum Branch in the Trung Ha Industrial Park, Tam Nong District. The forensic assessment determined that the seized products constituted trademark counterfeiting, infringing on a legally protected trademark registered under Nhôm Việt Pháp SHAL-Ninh Bình. Consequently, the Phu Tho Police initiated criminal proceedings, issuing decisions on prosecution and indictment against Vu Van Phu, Director of Vietnam-France Aluminum, and the corporate legal entity where Phu concurrently served as

Chairman of the Board of Directors and Director, for the offense of "Infringement of Industrial Property Rights" under the Vietnamese Penal Code³².

The Vinh Tan 2 Thermal Power Plant incident involved the continuous release of black smoke, severely impacting the lives of thousands of households in the northern area of Tuy Phong District. Additionally, the plant transported coal ash and dumped it along roadsides and in unregulated storage areas. The ash disposal site was not managed in compliance with regulations, significantly affecting local residents. This issue first emerged in 2015. Despite causing severe environmental pollution, the plant failed to implement remedial measures and continued its violations in 2018. Specifically, the ash storage facility at the thermal power center was designed to accommodate approximately 9.3 million cubic meters of ash and slag, but it had already accumulated 4.5 million cubic meters and was projected to reach full capacity within two years. Furthermore, the improper handling of ash and slag led to their dispersion into nearby residential areas, posing serious health risks to the local population. This incident once again raised alarms over environmental pollution caused by ash and slag at the Vinh Tan Thermal Power Center. The crisis resulted in significant economic, social, and environmental damage, with the fisheries sector being the most affected, followed by business, services, tourism, and the daily lives of fishermen. On September 10, 2020, the Investigation Police Agency of the Ba Ria-Vung Tau Provincial Police initiated a case of industrial property rights infringement and prosecuted the legal entity Saigon Vietnam Beer Group Joint Stock Company (Bac 2 Hamlet, Hoa Long Commune, Ba Ria City, Ba Ria-Vung Tau Province). The company was accused of organizing large-scale production of counterfeit "Saigon Beer" products, infringing on the trademark of SABECO.³³

Additionally, another case of industrial property rights infringement occurred at the Phu Tho Branch of Vietnam-France Aluminum Company (Trung Ha Industrial Zone, Tam Nong District, Phu Tho Province).

In all three cases, investigative bodies encountered delays and uncertainty when identifying or summoning the legal representative of the commercial legal entity. Legal representatives frequently failed to appear for investigative activities, citing various reasons or being abroad, and these persistent difficulties show that the abstract drafting problems of Article 434 of the CPC have very concrete consequences for the progress and outcome of proceedings, severely affecting investigation timelines and disrupting procedural processes.

5.3. Certain limitations in the criminal procedure code regarding the legal representative of legal entities committing crimes

The CPC and other relevant legal documents have provided relatively detailed regulations on the legal representative of commercial legal entities. However, through comparison and analysis of the current provisions, the author identifies several shortcomings that may affect the procedural process for commercial legal entities and lead to hesitation among competent procedural authorities when deciding to prosecute cases involving crimes committed by commercial legal entities.

Firstly, the CPC remains rigid in requiring that only the legal representative of the commercial legal entity may participate in criminal proceedings.

³² NGUYEN, K. The first time a commercial legal entity was criminally prosecuted in Phu Tho. In., 2020. Available at: <https://baophapluat.vn/lan-dau-tien-phap-nhan-thuong-mai-bi-xu-ly-hinh-su-tai-phu-tho-post341811.html> (accessed on 2 August 2025).

³³ TUYEN PHAN. The Trademark Infringement Case of SAIGON Beer: How a Commercial Legal Entity Faces Trial. In., 2023, vol. 2023. Available at: <https://thanhnien.vn/vu-xam-pham-nhan-hieu-bia-saigon-phap-nhan-thuong-mai-hau-toa-ra-sao-185230310080403683.htm> (accessed on 2 August 2025).

According to Clause 1, Article 434, all procedural activities involving a commercial legal entity being prosecuted for criminal liability must be conducted through its legal representative. If the legal representative of the commercial legal entity is under indictment or unable to participate in the proceedings for any reason, the entity must appoint another legal representative to participate. A notable point is that the CPC mandates that only the "legal representative" is allowed to take part in the procedural process, while authorized representatives, as defined in Articles 85 and 138 of the Civil Code 2015, are not permitted to participate.

Secondly, challenges in appointing the legal representative of a commercial legal entity committing a crime.

According to Clause 1, Article 434 of the Criminal Procedure Code, if the legal representative of a legal entity is under prosecution, investigation, indictment, or trial, or is otherwise unable to participate in the proceedings, the legal entity must appoint another individual as its legal representative to participate. In cases where, at the time of prosecution, investigation, indictment, or trial, the legal entity has no legal representative or has multiple legal representatives, the competent procedural authority will appoint a representative for the legal entity to participate in the proceedings.

Legislative Issues with the Wording of Clause 1, Article 434. The wording of Clause 1, Article 434 presents a legislative drafting issue. The provision links two scenarios with the conjunction "or," leading to two interpretations: (1) The first interpretation: At the time of prosecution, investigation, indictment, or trial, the legal entity does not have a legal representative. (2) The second interpretation: At the same time, the legal entity has multiple legal representatives.

The problem arises because the authority to appoint a representative only applies to the second scenario (multiple legal representatives). In the first scenario, the competent procedural authority cannot appoint a representative, as there is no existing legal representative under the law to appoint.

Furthermore, in the case of commercial legal entities with multiple legal representatives, does the procedural authority have the right to reject the legal representative appointed by the entity to participate in the proceedings?³⁴ Or what criteria should the procedural authority use to appoint or reject such a legal representative? These points remain unclear and lack specific guidance.³⁵ This is a crucial issue as it can significantly impact the individual appointed by the commercial legal entity or designated by the procedural authority. In situations where the appointed or designated individual fails to participate in the proceedings, they may be subject to escort measures as stipulated in Clause 2, Article 435 and Clause 3, Article 440 of the Criminal Procedure Code.

According to Clause 6, Article 12 of the Law on Enterprises 2020, some opinions suggest that in a two-member limited liability company, if one member who serves as the legal representative of the company is subject to criminal prosecution, the remaining member automatically assumes the role of the company's legal representative until a new decision on the legal representative is made by the Members' Council. This allows the remaining member to participate in criminal proceedings on behalf of the company. However, in the author's opinion, this provision is more appropriate for ensuring the normal operations of the limited liability company in civil transactions and management activities. For participation in criminal proceedings, it must strictly comply with the requirement that the

³⁴ DUY, L. H. T. AND N. T. T. THAO. The legal entity's representative in Croatian criminal proceedings and lessons learned for Vietnam. *Journal of Procuratorate Studies*, 2022, 60. <https://doi.org/10.59554/tckhks.i4.y2022.35>

³⁵ DUY, L. H. T. Comparative research on special investigation measures and experiences for Vietnam. *Procuratorate Studies*, 2023, 03. Available at: <https://vjol.info.vn/index.php/tks/article/view/82153> (accessed on 2 August 2025).

representative must be the "legal representative" and provide documents and evidence that substantiate their status as the lawful legal representative. This is because a legal representative is only considered legally valid from the moment their information is approved by the competent state authority and updated in the National Database on Enterprises. All legal actions taken by the legal representative are binding on the legal entity within the scope of representation as defined in the company's charter and by law.

Thirdly, rights and obligations of the legal representative in criminal proceedings.

The legal representative of a commercial legal entity participating in criminal proceedings has rights and obligations as stipulated in Article 434 of the CPC. However, in the author's opinion, these rights and obligations currently only align with situations where the legal representative of the entity may themselves later face prosecution as a defendant. This is because Clause 2, Article 75 of the PC, "The criminal liability of a commercial legal entity does not exclude the criminal liability of individuals." Consequently, when procedural authorities initiate a criminal case against a commercial legal entity, it is often inherently linked to the personal criminal liability of the legal representative. However, for legal representatives who are appointed by procedural authorities or individuals designated by the commercial legal entity to participate in proceedings, there is currently a lack of oversight mechanisms to protect the entity. If the legal representative acts dishonestly during the proceedings, this could result in harm or damage to the commercial legal entity and other individuals within the organization. Such circumstances could undermine the rights of the legal entity, leaving it inadequately protected.

According to Article 76 of the PC, commercial legal entities are only subject to criminal liability for 33 specific offenses, including those related to economic activities, environmental violations, and intellectual property. To pursue criminal liability, procedural authorities may need to conduct assessments, which serve as a critical source of evidence in criminal cases. However, Article 434 of the CPC does not provide the legal representative of the legal entity with the right to request reassessment, supplementary assessment, or independent assessment to protect the entity's lawful rights and interests.

Additionally, commercial legal entities may have multiple legal representatives. However, the appointment or designation of an individual as the legal representative to participate in proceedings may, in some cases, be incorrect due to objective reasons. Furthermore, if the appointed individual, while representing the legal entity in proceedings, determines that the requirements of the competent procedural authority exceed their expertise or conflict with professional ethical standards, the question arises whether they have the right to refuse the appointment and request the commercial legal entity to assign a more suitable representative. Current laws do not address this issue, leaving a gap in protecting the lawful rights and interests of commercial legal entities.

6. Recommendations

The present analysis is anchored in the constitutional guarantees and general principles of Vietnamese criminal law. Article 8 of the 2013 Constitution affirms the principle that the State is organised and operates under the Constitution and the law, while Article 16 recognises that everyone is equal before the law and shall not be discriminated against, and Article 31 guarantees fair trial rights, including the presumption of innocence and the right to defence. Article 3 of the 2015 Penal Code further sets out fundamental principles of criminal liability and sentencing, including individual culpability, proportionality between crime and punishment, and fairness in the application of criminal sanctions. These principles apply not only to natural persons but also, *mutatis mutandis*, to commercial legal entities and their

representatives. Accordingly, the article evaluates the current rules on representation by reference to their ability to secure effective defence rights for corporate entities without undermining corporate accountability. To address the shortcomings outlined above, I propose the following suggestions for improving and refining the legal framework:

Firstly, expand the scope of legal representatives for commercial legal entities in criminal proceedings.

Under the current provisions of the CPC, only the legal representative of a commercial legal entity is permitted to participate in criminal proceedings. However, as discussed above, this approach poses certain limitations. In contrast, the Civil Code 2015 allows representation to be established through delegation of authority between the principal and the representative, by decision of a competent state authority, by the entity's charter, or as prescribed by law (Articles 137 and 138).

The existing provisions of the CPC are somewhat "rigid" and can adversely affect procedural timelines. Therefore, I propose that guidelines be issued to amend Clause 1, Article 434 of the CPC to reflect the following approach "If the legal representative of a legal entity is under prosecution, investigation, indictment, or trial, the entity must appoint one of the following representatives to participate in the proceedings ":

(1) If a commercial legal entity has only one legal representative who is under investigation, prosecution, or trial, the entity must appoint an authorized representative to participate in the proceedings while awaiting the appointment of an official legal representative.

(2) If the commercial legal entity is a two-member limited liability company, the remaining member automatically assumes the role of legal representative until a new decision is made by the Members' Council regarding the company's legal representative. In cases where there are multiple members, the commercial legal entity must appoint an authorized representative until an official legal representative is designated. This provision also applies to joint-stock companies and partnerships.

This guidance would address the current challenges arising when the legal representative of a commercial legal entity is under prosecution, investigation, or trial. At the same time, it aligns with the Law on Enterprises 2020, the Civil Code, and ensures that procedural timelines of competent authorities are not disrupted due to the absence of a legal representative for participation in proceedings.

Secondly, amend and supplement article 434 of the cpc to address cases where a commercial legal entity has only one legal representative under prosecution, investigation, or trial, along with guidance on criteria for appointing participants in proceedings.

The author proposes adding the following provision to Paragraph 3 of Article 434:

"In cases where a commercial legal entity has no legal representative due to prosecution, investigation, indictment, or trial, or lacks a legally authorized representative at the time of proceedings, the investigative agency, the procuracy, or the court shall request the entity to appoint the highest-ranking managerial officer at the current time or someone capable of fulfilling procedural rights and obligations to participate. If the entity fails to comply within three days of receiving the request, the procedural authority shall temporarily appoint a senior manager or relevant individual to represent the entity during the proceedings. The appointment must be documented in writing and clearly outline the scope of authority of the temporary representative."

For cases where a commercial legal entity has multiple legal representatives, the current provision remains applicable: The competent procedural authority shall appoint one of the legal representatives of the entity to participate in the proceedings. However, to clarify this provision, a guideline specifying the criteria for

such appointments is necessary, as commercial legal entities may have multiple legal representatives, each with different responsibilities.

The guideline should include the following clarification:

"In cases where a commercial legal entity has multiple legal representatives, the procedural authority has the discretion to appoint one legal representative to participate in the proceedings. The appointed individual must have comprehensive knowledge of the case and decision-making authority appropriate to their title, as stipulated in the company's charter and the Law on Enterprises, according to the hierarchy of authority specified in the charter or by law."

These amendments and guidelines would ensure consistency, flexibility, and procedural efficiency while safeguarding the lawful rights and interests of commercial legal entities.

Thirdly, add additional rights and obligations for the legal representative of a commercial legal entity committing a crime.

To ensure that the legal representative of a commercial legal entity can fully exercise their rights and fulfill their obligations during criminal proceedings, the following provisions should be added to Article 435 of the CPC:

(1) Rights of the legal representative in proceedings.

Request supplementary assessments or reassessments of important evidence or documents directly affecting the legal entity's interests.

Participate fully in all procedural sessions, including presenting opinions, providing evidence, and requesting that the procedural authority summon relevant parties to clarify the case.

Refuse to provide information if such disclosure violates business confidentiality principles or directly harms the legal entity's legitimate interests, unless otherwise stipulated by law.

(2) Obligations of the legal representative.

To protect the legal entity's interests and ensure honesty and transparency in criminal proceedings, the legal representative should be bound by the following obligations:

Provide complete, accurate, and timely documents and evidence as required by the procedural authority, except in cases where refusal is allowed by law.

Attend all working sessions and hearings as summoned by the procedural authority.

Protect the legal entity's legitimate interests in compliance with the law, without exceeding the scope of their authority or causing harm to the legal entity.

These additions aim to strengthen the procedural role of the legal representative while maintaining a balance between their rights and obligations, ultimately ensuring fair and effective representation of the commercial legal entity in criminal proceedings.

7. Conclusion

This article examines how Vietnam's framework for representing commercial legal entities in criminal proceedings affects the protection of their procedural rights and legitimate interests, and identifies legislative amendments to address recurring difficulties. Drawing on corporate criminal liability theory and selective comparative insights, it asks: (i) how the current procedural model shapes corporate procedural protection, and (ii) which legislative reforms can remedy persistent problems concerning enterprise representatives. The analysis finds that Article 434 CPC's exclusive reliance on the "legal representative", its ambiguity where no or multiple representatives exist, and the under-defined rights and obligations of representatives can produce deadlock, delay, and weakened corporate defence outcomes in tension with constitutional guarantees of legality, equality before the law, and the right to defence. Accordingly, the article proposes amendments to

clarify appointment and priority rules in atypical situations, define representative authority across procedural stages (especially investigation), and specify a fuller set of procedural rights and duties to secure effective participation and defence consistent with due process standards.

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