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OPINION ON THE BILL AIMED AT ESTABLISHING A PRESUMPTION OF SELF-DEFENCE FOR LAW ENFORCEMENT OFFICERS IN THE PERFORMANCE OF THEIR DUTIES

FRANCE

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Based on an unofficial English translation of the Bill commissioned by the OSCE Office for Democratic Institutions and Human Rights.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Bill under consideration proposes to amend Article L. 435-1 of the French Internal Security Code (ISC), which regulates the circumstances in which National Police officers and National Gendarmerie personnel may use weapons in the performance of their duties.

As adopted by the National Assembly in first reading on 7 July 2026, the proposed amendment would introduce a statutory presumption that, unless evidence to the contrary is provided, law enforcement officers, when using weapons in performance of their duties, have acted in accordance with the law authorizing use of weapons (Article L. 435-1) and in compliance with the requirements of absolute necessity and strict proportionality.

The use of force by law enforcement officers may have consequences directly affecting fundamental human rights, notably the right to life, protected by Article 2 of the European Convention on Human Rights (ECHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which impose particularly stringent obligations on States Parties in relation to the use of force by State agents. While international norms recognize that legitimate force, including the use of lethal weapons, may be used *inter alia* to fulfil its positive obligation to protect life and safety of individuals, States are specifically required to establish a clear and effective legal and administrative framework governing the use of force and firearms, which limits their use to circumstances in which it is absolutely necessary and strictly proportionate and provides adequate safeguards against arbitrariness, abuse and avoidable loss of life. States must also ensure an effective investigation capable of establishing the circumstances in which the lethal force was used, determining responsibility where appropriate, and identifying systemic shortcomings. These obligations are not limited to the wording of domestic legislation but also concern its practical operation and effectiveness.

The explanatory note accompanying the Bill justifies the proposed presumption by referring to the increasing frequency and severity of attacks against law enforcement officials and to concerns that judicial scrutiny of their actions may be perceived as systematically calling their conduct into question, thereby creating legal uncertainty that could deter them from responding to real, immediate and serious threats. The Bill's stated aim is therefore to "*strengthen the legal protection of* [national police and national gendarmerie] *officers in the performance of their duties and contribute to ensure a fair, proportionate and protective framework for law enforcement, while respecting the fundamental requirements of the rule of law*".

It should be noted that the legislation currently in force sets out the grounds and conditions for use of weapons by the law enforcement officials. It also appears to be established practice that, where the use of weapons by law enforcement official results in death or serious injury, a judicial investigation is carried out on the order of the prosecutor to assess the lawfulness, necessity, and strict proportionality of

the use of weapons in the circumstances of the case. The findings of this investigation inform prosecutor's decision on whether or not to initiate criminal proceedings. In addition, administrative investigation is opened to assess potential violation of professional and ethical obligations under the Code of ethics of the national police and national gendarmerie.

As noted above, the stated aim of the Bill is to strengthen the legal protection afforded to members of the National Police and National Gendarmerie personnel in the performance of their duties, and to increase the efficiency of the law enforcement. However, it remains unclear how the proposed presumption of lawfulness would operate in practice alongside strict compliance with the requirements of absolute necessity and strict proportionality and how it would interact with the existing procedure of investigating incidents in which the use of weapon resulted in death or serious injury.

While acknowledging the duty of a State to ensure effective functioning of law enforcement bodies, their ability to act decisively to protect life and health of individuals, including law enforcement officials themselves, the proposed statutory presumption that the use of weapons by law enforcement officials in the exercise of their duties is lawful raises a number of serious concerns.

While recognizing that the Bill seeks to better and more clearly regulate the conditions of use of weapons, it may risk creating uncertainty for law enforcement officials as to the legal consequences of the presumption and the circumstances in which the use of weapons is legally permissible.

Furthermore, as indicated in the explanatory note, use of weapons resulting in death or injury would trigger an investigation to assess whether the legal requirements, including the strict requirements of necessity and proportionality, have been met. The legislation should therefore aim to ensure that such an assessment is made objectively, in light of all relevant circumstances of each individual case, by precisely defining the rights and obligations of law enforcement officials, providing necessary procedural safeguards, rather than assuming from the outset that the use of weapons was lawful. In this context, the presumption raises concerns regarding its potential impact on the application of the substantive requirements of absolute necessity and strict proportionality.

It is crucial that the legal framework provides clear and predictable guidance so that law enforcement officials understand the legal limits governing the use of weapons. Such guidance should be fully consistent with international human rights standards, including the principles of absolute necessity and strict proportionality.

A statutory presumption of lawfulness risks encouraging an approach in which investigators begin from the premise that the use of force was justified, potentially narrowing the scope and thoroughness of the investigation before the facts have been independently established. Ultimately, such a presumption risks undermining accountability for unlawful, unnecessary or disproportionate use of force by law enforcement officials, and may create a perception of impunity, thereby eroding

public confidence in law enforcement bodies, particularly given the gravity of use of weapons and its potentially lethal consequences.

The findings of this opinion are without prejudice to the impartiality of the judicial investigation into the use of weapons, while recognizing that the proposed amendments may lead to unintended consequences, adversely affecting its effectiveness.

It is also noted that the amendments made to the Bill during the committee discussions replaced the initially proposed presumption of self-defence in the Penal Code with a presumption of lawfulness of the use of weapons by law enforcement officers in accordance with the conditions of Article L. 435-1 of the ISC. However, the title of the Bill continues to refer to the presumption of self-defence for law enforcement officers in the performance of their duties, which creates a discrepancy between the title and content of the Bill.

The proposed amendment may raise concerns regarding the State's obligation to ensure effective accountability for the use of force by its agents. In particular, where relevant evidence is held primarily by law enforcement authorities which usually have superior or exclusive access to information capable of shedding light on all the relevant circumstances surrounding the use of force, the presumption could make it more difficult in practice to challenge the official account of an incident and to establish whether the use of force was lawful, absolutely necessary and strictly proportionate. This could also have implications for the ability of victims and their families to seek effective redress through domestic and international mechanisms, where difficulties in establishing the relevant facts may hinder their ability to substantiate claims of violations of international human rights obligations.

It should be noted that the European Court of Human Rights has recognized in its case law that state agents may act on an honest and reasonable belief, that may subsequently prove to be mistaken. Retrospectively presuming the lawfulness of use of lethal force may weaken requirement of strict scrutiny, which entails assessing whether such a belief was reasonably founded in light of the circumstances surrounding the operation as a whole.

Therefore, it is recommended to reconsider introduction of a statutory presumption of lawful use of weapons by law enforcement officials, as proposed by the Bill under review.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 10 July 2026, the Secretary General of the National Consultative Commission on Human Rights of the Republic of France (hereinafter "CNCDH") sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Bill Aimed at Establishing a Presumption of Self-Defence for Law Enforcement Officers in the Performance of their Duties (hereinafter "the Bill").
2. On 13 July 2026, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the Bill with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the Bill submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the use of weapons by law enforcement officers in the performance of their duties in France. Especially, the Opinion does not provide a comprehensive review of the other provisions of Article L. 435-1 of the French Internal Security Code (hereinafter "ISC") that govern the use of weapons by law enforcement officers, except to the extent relevant for the purpose of assessing the Bill.
5. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and should always be considered in light of the broader national institutional and legal framework, as well as the country's context and political culture.

1 See especially OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area (2008), point 4, where the Ministerial Council *"[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention […]"*. See also CSCE, 1991 Moscow Document, paras. 21, which provides that OSCE participating States will *"(21.1) - take all necessary measures to ensure that law enforcement personnel, when enforcing public order, will act in the public interest, respond to a specific need and pursue a legitimate aim, as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement; (21.2) - ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments*"; and OSCE, 1999 Istanbul Document, Charter for European Security: IV. Our Common Instruments, para. 45, which provides that *"[t]he OSCE will also work with other international organizations in the creation of political and legal frameworks within which the police can perform its tasks in accordance with democratic principles and the rule of law*".

6. This Opinion is based on an unofficial English translation of the Bill commissioned by ODIHR, which is attached to this document as an Annex. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

7. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in France in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

8. This section provides an overview of the main international and regional human rights instruments and standards regarding the right to life and the use of force and firearms by law enforcement officials.

1.1. The Right to Life and Regulation of the Use of Force and Firearms by Law Enforcement Officials

9. As a fundamental and non-derogable right inherent in every human being, the right to life holds crucial importance both for individuals and for society as a whole and constitutes the prerequisite for the enjoyment of all other human rights.[2]

10. The right to life is enshrined in several core international and regional human rights instruments, including in Article 3 the Universal Declaration of Human Rights,[3] Article 6 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"),[4] Article 6 of the Convention on the Rights of the Child,[5] Article 10 of the Convention on the Rights of Persons with Disabilities,[6] Article 2 of the European Convention on Human Rights of the Council of Europe (hereinafter "ECHR")[7] and Article 2 of the Charter of Fundamental Rights of the European Union.[8] The jurisprudence of the UN Human Rights Committee and its General Comment no. 36 on Article 6 of the ICCPR,[9] as well as the case law of the European Court of Human Rights (hereinafter "ECtHR") on Article 2 of the ECHR also offer authoritative interpretation of the nature and scope of the right to life.[10]

11. Article 6 (1) of the ICCPR recognizes and protects the inherent right to life of all human beings, provides that no one shall be arbitrarily deprived of life, and requires that the

2 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 2.
3 Universal Declaration of Human Rights, UN General Assembly, 10 December 1948, Article 3.
4 International Covenant on Civil and Political Rights (hereinafter "ICCPR"), UN General Assembly, resolution 2200 A (XXI), 16 December 1966, Article 6. France ratified the ICCPR on 4 November 1980.
5 Convention on the Rights of the Child, UN General Assembly, resolution 44/25, 20 November 1989, Article 6. France ratified the Convention on the Rights of the Child on 7 August 1990.
6 Convention on the Rights of Persons with Disabilities, UN General Assembly, resolution 61/106, 12 December 2006, Article 10. France ratified the Convention on the Rights of Persons with Disabilities on 18 February 2010.
7 European Convention on Human Rights (hereinafter "ECHR"), Council of Europe, entered into force on 3 September 1950, Article 2. France ratified the ECHR on 3 May 1974.
8 Charter of Fundamental Rights of the European Union, 26 October 2012, Article 2. The Charter became legally binding when the Treaty of Lisbon entered into force on 1 December 2009. France ratified the Treaty of Lisbon on 14 February 2008.
9 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019.
10 See Guide on Article 2 of the European Convention on Human Rights, Registry of the European Court of Human Rights (hereinafter "ECtHR"), updated on 28 February 2026.

right to life be protected by law. It lays the foundation for the obligation of States Parties to respect and ensure the right to life, to give effect to it through legislative and other measures and to provide effective remedies and reparation to all victims of violations of the right to life.[11]

12. In its General Comment 36, the UN Human Rights Committee has made clear that the use of potentially lethal force for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat.[12] The General Comment further specifies that States Parties are required to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, including by putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimise the risk they pose to human life, and mandatory reporting, review and investigation of lethal incidents and other life-threatening incidents.[13]

13. Article 2 of the ECHR also contains the general obligation to protect the right to life by law and the prohibition of intentional deprivation of life. Article 2 (2) of the ECHR provides a list of situations where it is permitted to use force when "*absolutely necessary*", which may result, as an unintended outcome, in the deprivation of life.[14] The ECtHR has made clear that the primary duty of the State to secure the right to life entails putting in place an appropriate legal and administrative framework designed to provide effective deterrence against threats to the right to life and defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of relevant international standards.[15] The Court further underscored that *"[u]nregulated and arbitrary action by State agents is incompatible with effective respect for human rights*" meaning that "*policing operations must be sufficiently regulated by national law, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force*",[16] and "*even against avoidable accident*".[17] In line with the principle of strict proportionality inherent in Article 2 of the ECHR, the ECtHR has also explained that national legal frameworks must make recourse to firearms dependent on a careful assessment of the situation and, in particular, on an evaluation of the nature of the offence committed by the person in question and of the threat he or she posed.[18]

14. Besides these legally binding instruments, there are also several international soft law documents which specifically provide detailed guidance to States on legislating and regulating the use of force and firearms by law enforcement officials.

15. In particular, Article 3 of the 1979 UN Code of Conduct for Law Enforcement Officials provides that "*law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duties*".[19] In essence, it enshrines the

11 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 4.
12 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 12.
13 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 13.
14 ECHR, Council of Europe, entered into force on 3 September 1950, Article 2.2 which provides "*Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection.*"
15 *Makaratzis v. Greece* [GC], ECtHR, no. 50385/99, 20 December 2004, paras. 57 and 59.
16 *Giuliani and Gaggio v. Italy* [GC], ECtHR, no. 23458/02, 24 March 2011, para. 249.
17 *Giuliani and Gaggio v. Italy* [GC], ECtHR, no. 23458/02, 24 March 2011, para. 209. See also *Makaratzis v. Greece*, ECtHR, no. 50385/99, 20 December 2004, para. 58.
18 *Nachova and Others v. Bulgaria* [GC], ECtHR, nos. 43577/98 and 43579/98, 6 July 2005, para. 96.
19 Code of Conduct for Law Enforcement Officials, UN General Assembly, resolution 34/169, 17 December 1979, Article 3.

principles of strict necessity and proportionality of the use of force. The commentary to the Article states that the provision "*emphasises that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used*".[20] The commentary further provides that "*[n]ational law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision*".[21] In addition, the commentary explains that the use of firearms is "*an extreme measure*" and that "*every effort should be made to exclude the use of firearms*"; "*[i]n general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender"*.[22]

16. The 1990 UN Basic Principles on the Use of Force and Firearms[23] build on the principles set by the UN Code of Conduct for Law Enforcement Officials and further stipulate the lawful grounds for use of force and firearms. Principle 1 requires Governments and law enforcement agencies to "*adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials*". Principle 4 states that in carrying out their duties, law enforcement officials must, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended results. Principle 9 stipulates the lawful grounds for use of firearms specifically. It provides that "*law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.*"

17. The OSCE Guidebook on Democratic Policing underlines that *"[t]he police must have as their highest priority the respect for and the protection of life"* and that *"[w]hile the use of force is often indispensable to proper policing – in preventing a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders – police officers must be committed to the principle that the use of force must be considered as an exceptional measure, which must not be executed arbitrarily, but must be proportionate to the threat, minimizing damage and injury, and used only to the extent required to achieve a legitimate objective"*.[24] The OSCE Guidebook also reiterates Principle 9 and of the 1990 UN Basic Principles on the Use of Force and Firearms regarding the lawful grounds for using firearms.[25]

20 *Ibid.* Article 3, commentary a.
21 *Ibid.* Article 3, commentary b.
22 *Ibid.* Article 3, commentary c.
23 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
24 Guidebook on Democratic Policing, OSCE, 2008, paras. 67-68.
25 *Ibid.* para. 69.

1.2. Obligation to Investigate Death or Serious Injury as a Result of the Use of Force

18. An important element of the protection of the right to life is the obligation on state authorities to investigate cases of death or serious injury as a result of the use of force by law enforcement officials, and to prosecute incidents involving allegations of excessive use of force by law enforcement officials resulting in death or serious injury. The duty to investigate is implicit in the obligation to protect the right to life, and is reinforced by the general duty to ensure the rights recognised in the ICCPR set out in Article 2 (1) and the duty to provide an effective remedy to victims of human rights violations and their relatives set out in Article 2 (3) of the ICCPR.

19. In its General Comment no. 36, the UN Human Rights Committee explained that States Parties are required to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, and that these measures include, among others, mandatory reporting, review and investigation of lethal incidents and other life-threatening incidents.[26] The UN Human Rights Committee also made clear that "*investigations and prosecutions of potentially unlawful deprivation of life should be undertaken in accordance with relevant international standards*" and must be aimed at "*ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations*".[27]

20. In its case-law, the ECtHR also ruled that Article 2 of the ECHR requires state authorities to investigate cases of death or serious injury as a result of the use of force by law enforcement officials. In *McCann and Others v. the United Kingdom*, the ECtHR held that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by state authorities.[28] The Court underlined that the obligation to protect the right to life, read in conjunction with the general duty under Article 1 of the ECHR to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, "*requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State*".[29] The ECtHR has made clear that where a suspicious death has been inflicted at the hands of a State agent, "*particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation [o]therwise, the State risks instilling a sense of impunity in its agents, by appearing to tolerate their life-threatening acts*".[30]

21. In cases of homicide, the interpretation of Article 2 of the ECHR entails an obligation to officially investigate whether there was an offence, which normally gives rise to criminal liability. This obligation is imposed on the State, among other, because often, in practice, the true circumstances of the death resulting from the use of force by a law enforcement official are, or may be, largely confined within the knowledge of state officials or authorities.[31]

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26 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 13.
27 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 27.
28 *McCann and Others v. the United Kingdom* [GC], ECtHR, no. 18984/91, 27 September 1995, para. 161.
29 *McCann and Others v. the United Kingdom* [GC], ECtHR, no. 18984/91, 27 September 1995, para. 161. See also, e.g., *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no. 5878/08, 30 March 2016, para. 230.
30 *Enukidze and Girgvliani v. Georgia*, ECtHR, no. 25091/07, 26 April 2011, para. 277.
31 *Makaratzis v. Greece* [GC], ECtHR, no. 50385/99, 20 December 2004, para. 73.

22. Over time, the ECtHR has accepted that the obligation to investigate arises in a variety of situations where an individual has sustained life-threatening injuries, died or has disappeared in violent or suspicious circumstances, irrespective of whether those allegedly responsible are state agents or private persons or are unknown or the injuries or death are self-inflicted.[32]

23. The essential purpose of an investigation under Article 2 is to secure the effective implementation of domestic laws safeguarding the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility.[33] As underlined in the ECtHR caselaw, the authorities must act of their own motion once the matter has come to their attention and they cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures.[34]

24. Article 22 of the UN Basic Principles on the Use of Force and Firearms underline the responsibility of Governments to establish effective reporting and review mechanisms in case of death of serious injury as a result of the use of force by law enforcement officials. It provides that "*[i]n cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control*".[35]

25. The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths (hereinafter "Minnesota Protocol") outlines States' legal obligations and sets out standards and guidelines relating to the investigation of potentially unlawful death or suspected enforced disappearance.[36] It sets out the elements of the duty to investigate under international law and outlines the practical steps that should be taken in an effective investigation of a potentially unlawful death,[37] including detailed guidelines on crime-scene investigation.[38] Notably, the Minnesota Protocol outlines the key elements of the duty to investigate: promptness, effectiveness and thoroughness, independence and impartiality, and transparency.[39] Through its case-law, the ECtHR has also developed similar principles of an effective investigation, namely: independence, adequacy and thoroughness, promptness, public scrutiny and the participation of the next-of-kin.[40]

2. BACKGROUND

2.1. National Legal Framework Regulating the Use of Weapons by Law Enforcement Officers

26. Article L. 435-1 of the Internal Security Code (hereinafter "ISC") establishes the general statutory framework regulating the use weapons,[41] including firearms, by national police

32 Guide on Article 2 of the European Convention on Human Rights, ECtHR Registry, updated on 28 February 2026, para. 155 and caselaw referenced therein.
33 See *Hugh Jordan v. the United Kingdom*, ECtHR, no. 24746/94, 4 May 2001, para. 105; *Nachova and Others v. Bulgaria* [GC], ECtHR, nos. 43577/98 and 43579/98, 6 July 2005, para. 110; *Al-Skeini and Others v. the United Kingdom* [GC], ECtHR, no.55721/07, 7 July 2011, para. 163.
34 *Al-Skeini and Others v. The United Kingdom* [GC], ECtHR, no. 55721/07, 7 July 2000, para. 165.
35 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 22.
36 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, Office of the UN High Commissioner for Human Rights (OHCHR), revised 2017.
37 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, Chapter IV, Conduct of an Investigation.
38 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, Chapter V, Detailed Guidelines.
39 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, paras. 22-33.
40 Guide on Article 2 of the European Convention on Human Rights, ECtHR Registry, updated on 28 February 2026, pp. 38-45.
41 Article R311-1 of the Internal Security Code (hereinafter "ISC") defines weapons as "*Any object or device designed or intended by its very nature to kill, injure, strike, neutralise or incapacitate*".

and national gendarmerie officers. It has been in force since 2 March 2017.[42] It is noted that Article L. 435-1 of the ISC makes a cross-reference to the cases of use of force and weapons covered by L. 211-9 of the ISC in the context of dispersal of public gatherings and maintenance of public order in that context, which goes beyond the scope of this Opinion since the proposed amendments do not explicitly refer to a presumption of lawful use of weapons in the context of public gatherings.[43]

27. Under Article L. 435-1 of the ISC, a law enforcement officer has the power to use their weapons only when the following cumulative requirements are met: the officer is acting in the performance of their duties; is wearing their uniform or externally visible insignia identifying their official status; the use of the weapon is absolutely necessary and the weapon is used in a strictly proportionate manner, and occurring under one of the specific circumstances enumerated in the provision.

28. Article L. 435-1 of the ISC defines five such specific circumstances when law enforcement officers are authorized to use their weapons, subject to the above-mentioned cumulative requirements:

   i. "*When attacks on life or physical integrity are made against them or against others, or when armed persons threaten their lives or physical integrity, or those of others";*

   ii. "*When, after issuing two verbal warnings, they are unable to defend the premises they occupy or the persons in their custody by any other means";*

   iii. "*When, immediately after two verbal warnings, they cannot compel persons seeking to escape their custody or investigations – and who are likely to endanger their own lives or physical integrity or those of others during their flight – to stop by any means other than the use of weapons";*

   iv. "*When they are unable to stop, other than by the use of weapons, vehicles, boats, or other means of transportation whose drivers do not comply with an order to stop and whose occupants are likely, while fleeing, to endanger their own lives or physical integrity or those of others";*

   v. "*For the sole purpose of preventing the imminent recurrence of one or more murders or attempted murders that have just been committed, when they have real and objective reasons to believe that such recurrence is likely based on the information available to them at the time they use their weapons".*

29. It appears to be an established practice in France that, following any use of weapons by law enforcement officials which results in death or serious injury, two types of investigations are conducted.[44] First, a judicial investigation is carried out on the order of the prosecutor, to assess whether the use of weapons was lawful, absolutely necessary, and strictly proportionate to the circumstances of the case. Based on the findings of the judicial investigation, the prosecutor may decide to initiate criminal proceedings. Second, an administrative investigation is opened to assess whether the law enforcement officer complied with their professional, and ethical obligations under the Code of ethics for the national police and national gendarmerie. On the basis of the investigating service's

42 Article L. 435-1 of the ISC, introduced by Law No. 2017-258 of 28 February 2017 on Public Security, Article 1.

43 With respect to the use of force by law enforcement officers during demonstrations in France, see Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2022 – June 2024), ODIHR, pp. 26-29 on the use of force and dispersals.

44 See Rapport d'information déposé en application de l'article 145 du règlement par la commission des lois constitutionnelles, de la législation et de l'administration générale de la république, en conclusion des travaux d'une mission d'information (1) sur la hausse du nombre de refus d'obtempérer et les conditions d'usage de leurs armes par les forces de l'ordre, n° 2692, 29 May 2024, sections II.B.

recommendations, the competent administrative authority then decides whether to initiate disciplinary proceeding.

2.2. General Comment on Cases of Authorized Use of Weapons Provided under Article L. 435-1 of the ISC

30. It is noted that several UN bodies have expressed concerns about allegations of excessive use of force and firearms by law enforcement officials,[45] identified potential shortcomings in Article L. 435-1 of the ISC, and called on the French authorities to review its legislation to align with international standards on the use of force and firearms by law enforcement officials.[46] In particular, in 2025, the UN Committee Against Torture, in its Concluding Observations on the eighth periodic report of France stated that "*the Committee is concerned about Article L. 435-1 of the ISC, which seems to have extended the scope of self-defence for police officers beyond what is reasonable, contributing to a rise in the number of deaths linked to the use of firearms by law enforcement officers"*.[47]

31. Although a separate comprehensive assessment of Article L. 435-1 of the ISC goes beyond the scope of the present Opinion, several aspects of Article L. 435-1 of the ISC merit note insofar as the proposed amendments aim to introduce a presumption of authorized, or lawfulness of the, use of weapons by law enforcement officers that fall within the scope of one of the five cases listed under proposed amended Article L. 435-1 (I) and (II) of the ISC. At the same time, as emphasized by the UN Human Rights Committee, *"[a] deprivation of life may, nevertheless, be authorized by domestic law and still be arbitrary*", further noting that in this respect, *"[d]eprivation of life is, as a rule, arbitrary if it is inconsistent with international law*".[48]

32. In its General Comment no. 36, the Committee further underlines with respect to the use of potentially lethal force for law enforcement purposes that it "*is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. It cannot be used, for example, in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others*".[49]

33. In the same vein, Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that "*[l]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life*".[50] In

45 See e.g., UN Committee against Torture, Concluding observations on the eighth periodic report of France, 22 May 2025, paras. 28 and 30; UN Human Rights Committee, Concluding observations on the sixth periodic report of France, CCPR/C/FRA/CO/6, 3 December 2024, paras. 18 and 46. See also e.g., Report of the Working Group on the Universal Periodic Review – Fourth cycle, UN Human Rights Council, 17 July 2023, Recommendations 45.84, 45.92 and 45.99, supported by France.

46 UN Committee against Torture, Concluding observations on the eighth periodic report of France, 22 May 2025, paras. 28, 29(a) and 31; UN Human Rights Committee, Concluding Observations on the sixth periodic report of France, CCPR/C/FRA/CO/6, 3 December 2024, para. 19 (a).

47 UN Committee against Torture, Concluding observations on the eighth periodic report of France, 22 May 2025, para. 28.

48 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 12.

49 General comment no. 36 on article 6: right to life of the ICCPR, UN Human Rights Committee, CCPR/C/GC/36, 3 September 2019, para. 12.

50 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 9 provides that "*[l]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat*

essence, this means that because the use of firearms inherently endangers lives, such weapons may only be used by law enforcement officials to defend an equally vital interest, namely to protect a person from an imminent risk of death or serious injury. At the same time, paragraphs 1, 3 and 4 of Article L. 435-1 of the ISC permit the use of firearms in the event of a risk to life or to physical integrity, without requiring that this risk be real and imminent. In addition, paragraph 2 permits the use of firearms to defend premises, again without any requirement that a risk of death or serious injury be present. In this respect, international standards and recommendations make it clear that firearms should not be used to prevent a theft or to safeguard other interests such as property (including public property, such as government buildings), unless any of these incidents are accompanied by an imminent threat of death or serious injury.[51] The threshold of risk set out in paragraphs 3 and 4 is, moreover, particularly vague, requiring only that targeted individuals be "likely" to commit the acts described, without further criteria as to imminence, probability or objective justification.

34. Further, Principle 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires that, before using firearms, law enforcement officials shall "*give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.*"[52] However, Article L. 435-1 exempts law enforcement officers of this warning in the circumstances set out in paragraphs 1, 4 and 5 of the existing provision, including when there is no imminent threat to life or physical integrity to law enforcement official and/or other individuals.

35. In light of the foregoing, paragraphs 1 to 4 of Article L. 435-1, which will remain unchanged with the adoption of the proposed amendments, appear not fully consistent with international standards, which means that the presumption of authorized use of firearms by law enforcement officials proposed in the Bill under review would cover circumstances that *prima facie* constitute arbitrary deprivation of life. Overall, the principles of absolute necessity and strict proportionality inherent in Article 6 of the ICCPR and Article 2 of the ECHR require, respectively, that firearms be used only as a measure of last resort, only when all less extreme means are insufficient to achieve a legitimate law enforcement objective, and that no police intervention should cause more harm than it seeks to prevent respectively.

2.3. Overview of the Bill

36. The Bill proposes two amendments to Article L. 435-1 of the ISC. The first amendment repeals the fifth statutory case (L. 435-1 para. 5, see para 28.v *supra*) when law enforcement officers are authorized to use their weapons and replaces it with a new provisions which, while overall re-stating existing paragraph 5 of Article L. 435-1, removes the requirement for them to wear their uniform or external and visible insignia indicating their status when they aim at *"preventing the recurrence, in the immediate future, of one or more murders or attempted murders that have just been committed,*

of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

51 See e.g., Resource Book on Use of Force and Firearms in Law Enforcement, UN OHCHR-UNODC, 2017, pp. 21-22, which notes that threats against a nuclear facility, dam, or airplane may constitute examples where lethal force is necessary.

52 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 10.

when they have real and objective grounds to believe that such a recurrence is likely based on the information available to them at the time they use their weapons." (sole Article, paras. 5 and 7 of the Bill).

37. The second amendment proposes to add a new provision to Article L. 435-1 which provides: "*When they use their weapons, National Police officers and National Gendarmerie personnel are presumed to have acted in one of the cases authorized by this article in accordance with the conditions of absolute necessity and strict proportionality. This presumption may, at any time, be rebutted by any evidence to the contrary*" (sole Article, para. 8). In essence, the second amendment introduces a statutory presumption that officers who use their weapons, including firearms, have acted within the law and in accordance with the conditions of absolute necessity and strict proportionality, in one of the authorized statutory cases defined in Article L. 435-1 of the ISC, unless evidence proves otherwise.

38. The explanatory note attached to the Bill justifies the need for proposed presumption by referring to the increasing frequency and severity of attacks against law enforcement officials and to concerns that judicial scrutiny of their actions may be perceived as systematically questioning their conduct, creating legal uncertainty that could deter them from responding to real, immediate and serious threats. The stated objective of the Bill is to strengthen the legal protection of national police and national gendarmerie personnel in the performance of their duties, and increase the efficiency of the law enforcement.[53] It remains unclear, however, how the proposed presumption of lawfulness, would operate in practice, in conjunction with strict compliance with the requirements of absolute necessity and strict proportionality and of the existing procedure of investigating incidents involving death or serious injury resulting from the use of weapons.

39. State may pursue a legitimate aim to ensure effective functioning of law enforcement bodies and enhance their ability to act decisively in order to protect life and health of individuals, including of the law enforcement officials themselves. In this regard, it is noted that according to the explanatory note, the Bill is proposed to respond to the worrying trend in violence against law enforcement officials, facing increasingly frequent and serious attacks, sometimes carried out using weapons. At the same time, the proposed statutory presumption of lawfulness of the use of weapons by law enforcement officials in the exercise of their duties raise a number of serious concerns due to lack of compliance with international norms.

40. The subsequent sections of the Opinion focus in more details on the second proposed amendment which introduces a statutory presumption of lawfulness for law enforcement officers using their weapons in the performance of their duties in one of the authorized statutory cases defined in Article L. 435-1 of the ISC. The first proposed amendment is analysed separately in section *7 infra*.

53 See Exposé des motifs, proposition de loi n. 691 visant à reconnaître une présomption de légitime défense pour les forces de l'ordre, dans l'exercice de leurs fonctions, 3 December 2024 which states : « *Ces dernières années, une évolution inquiétante de la violence à leur encontre a été constatée. Les forces de l'ordre sont confrontées à des agressions de plus en plus fréquentes et graves, perpétrées parfois avec des armes de guerre. Ces nouvelles menaces, portées par des individus ou des groupes armés lourdement, dépassent le cadre classique de la délinquance et traduisent un véritable défi pour la sécurité publique. Dans ce contexte, l'usage de la force par les agents doit être envisagé avec clarté et efficacité, tout en tenant compte des principes de nécessité et de proportionnalité. Cependant, les agents des forces de l'ordre font souvent face à un second défi : celui de la judiciarisation de leurs actions, parfois perçue comme une remise en question systématique de leur engagement sur le terrain. Cette situation peut engendrer une insécurité juridique dissuasive et peser sur leur capacité d'agir face aux dangers. C'est pourquoi il est proposé d'instaurer une présomption de légitime défense au bénéfice des forces de l'ordre, lorsqu'elles agissent en réponse à une menace réelle, immédiate et grave à leur intégrité physique ou à celle d'autrui. Ce dispositif, basé sur l'article 222-6 du code pénal, renforcerait la protection juridique des agents dans l'exercice de leurs fonctions, contribuerait à garantir un cadre d'intervention juste, proportionné et protecteur pour les forces de l'ordre tout en respectant les exigences fondamentales liées à l'État de droit.* »

41. The Bill was tabled on 3 December 2024 and initially proposed introducing a new Article 122-6-1 of the Penal Code, establishing a presumption of self-defence for national or municipal police officer and the member of the national gendarmerie who used their weapons under the conditions set out in Articles L. 435-1 and L. 511-5-1 of the ISC.[54] During the discussions of the Law Committee of the National Assembly held in January 2026, several amendments were introduced, resulting in the removal of the proposed Article 122-6-1 of the Penal Code and instead proposing to supplement Articles L. 435-1 of the ISC, which governs the use of weapons by law enforcement officers in the performance of their duties, with a presumption of lawfulness of such use in accordance with the cases of authorized use of weapons already provided by that provision in force since 2017. A discussion in plenary session of the National Assembly took place on 22 January 2026 and the Bill was adopted by the National Assembly (the lower house of France's bicameral parliament) in first reading on 7 July 2026, and transmitted to the Senate (the upper house) on the same day for consideration.

42. The findings of this opinion are without prejudice to the impartiality of the judicial investigation into the use of weapons, while recognizing that the proposed amendments may lead to unintended consequences, adversely affecting its effectiveness. It is also noted that the substantial changes introduced by the amendments proposed during the committee discussions, which effectively remove the provision initially proposed to establish a presumption of self-defense in the Penal Code, creates a clear discrepancy between the title of the Bill and the substance of the proposed amendments that instead concern a presumption of lawfulness of the use of weapons by law enforcement officers in accordance with the conditions of Article L. 435-1 of the ISC.

3. Obligation to Establish an Adequate Legal and Administrative Framework on the Use of Force by Law Enforcement Officials

43. As noted in para. 13 *supra*, the State's duty to protect the right to life entails putting in place an appropriate legal and administrative framework designed to provide effective deterrence against threats to the right to life and defining the limited circumstances in which law enforcement officials may use force and firearms.[55] Use of force and firearms by law enforcement officials must be sufficiently regulated in domestic law with adequate and effective safeguards in place to protect against avoidable accident, arbitrariness or the abuse of force.[56] When applying these principles, the ECtHR does not merely assess the wording of domestic legislation regulating the use of force and firearms by law enforcement officials, but also its practical operation and effectiveness.[57]

44. The Bill introduces a statutory presumption that the requirements that the use of weapons, including firearms, by national police and national gendarmerie officers be absolutely necessary and strictly proportionate are met, unless there is evidence to the contrary. The proposed change may raise concerns as to the clarity and foreseeability of the legal framework governing the use of weapons by law enforcement officers. First, depending

54 See Dossiers législatifs, reconnaitre une présomption de légitime défense pour les forces de l'ordre dans l'exercice de leurs fonctions,. Article L. 511-5-1 of the ISC provides that "*Municipal police officers authorized to carry a weapon according to the terms defined in article L. 511-5 may use their weapons under the conditions provided for in the first paragraph of the article L. 435-1 and in the cases provided for in 1° of the same article L. 435-1*".

55 *Makaratzis v. Greece*, ECtHR, no. 50385/99, 20 December 2004, paras. 57 and 59.

56 *Giuliani and Gaggio v. Italy* [GC], ECtHR, no. 23458/02, 24 March 2011, para. 249.

57 See e.g. *Nachova and Others v. Bulgaria*, ECtHR, nos. 43577/98 and 43579/98, 6 July 2005, para. 109, in which the Court found a violation of Article 2 of the ECHR where domestic regulations were excessively permissive and lacked sufficiently clear safeguards to prevent the arbitrary deprivation of life. See also, *Erdoğan and Others v. Turkey*, ECtHR, no. 19807/92, paras. 78, 81 and 87, in which the Court found that the legal framework did not give law enforcement officials clear guidelines and criteria on the use of force, with the result that the authorities responsible for planning the operation enjoyed excessively wide autonomy of action; the Court held that the authorities failed to protect the right to life in the planning and manner of execution of the operation in violation of Article 2 of the ECHR.

on how the presumption is interpreted in practice by the public authorities and the further guidance or explanation about the effect of the presumption that may be provided to law enforcement officers at a later stage, the introduction of a presumption of lawfulness may be understood in practice as relaxing the conditions governing the use of force, thereby potentially downgrading the restrictive nature of the substantive requirements of absolute necessity and strict proportionality. Second, the conditions governing the use of weapons under Article L. 435-1 are already rather broad and unclear to some extent (see paras. 30 - 35 *supra*) and the proposed amended framework may increase uncertainty for law enforcement officers as to the consequences of the presumption and the circumstances in which the use of weapons and potentially lethal force is legally permissible.

45. It also remains unclear how the introduction of a presumption of lawfulness, in the absence of corresponding changes to the applicable procedural framework, would contribute to achieving the stated objective of the Bill to strengthen the legal protection of law enforcement officers in the performance of their duties. In particular, the Bill does not appear to modify the existing procedures governing the investigation of incidents involving death or serious injury resulting from the use of weapons by law enforcement officials, including the assessment of whether such use complied with the requirements of absolute necessity and strict proportionality. It is therefore unclear how the proposed presumption would operate in practice within the existing framework for judicial investigations and criminal proceedings, or what additional legal protection it would afford to law enforcement personnel.

46. Further, the proposed presumption of lawfulness is broadly framed and does not take sufficient account of circumstances in which international and/or regional jurisprudence or recommendations may establish a presumption of State responsibility, or prohibit particular uses of force or weapons. For example, in certain circumstances where individuals are under the control of law-enforcement authorities and are subjected to use of force or violence, it is generally recognized that there is a presumption of State responsibility for resulting injuries, with the burden resting on the State to provide a satisfactory and convincing explanation.[58] Specific restrictions and prohibition on the use of force or particular weapons also apply in particular circumstances, such as the prohibition of the use of firearms, electric shock weapons and violent methods against children,[59] the use of certain weapons and other means of law enforcement that are considered inherently cruel, inhuman or degrading by nature or design and, accordingly, whose use is incompatible with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment,[60] among other.

47. More generally, the effective implementation of the domestic laws protecting the right to life, including the duty to carry out an effective investigation, is regarded as essential for maintaining public confidence in law enforcement authorities' adherence to the rule of law and for preventing any appearance of tolerance of unlawful acts.[61] In this respect, the introduction of the proposed presumption, if not adequately justified, may be perceived by the public as conferring an unwarranted procedural advantage to the public authorities in circumstances where effective investigations are essential to ensure accountability for the monopoly of the use of force granted to law enforcement officers. Such a perception

58 See e.g., *Dokukiny v. Russia*, ECtHR, no. 1223/12, 24 May 2022, para. 26. See also, for instance, the Guidance on Less-Lethal Weapons in Law Enforcement *(2020)*, OHCHR, para. 3.9, *which* likewise states that where a person dies in custody, including as a result of less-lethal weapons, there is a presumption of State responsibility and the burden of proof rests upon the State to prove otherwise.

59 See e.g., United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, adopted by the UN General Assembly on 18 December 2014, A/RES/69/194, 26 January 2015, para. 34 (c).

60 See e.g., Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/72/178, 20 July 2017, para. 48.

61 See e.g., *Opuz v. Turkey*, ECtHR, no. 33401/02, 9 June 2009, para. 150.

could ultimately undermine public confidence in the authorities, particularly given the gravity of any use of weapons and potentially lethal consequences. In accordance with international standards, all such incidents should be effectively investigated, not only to identify and prosecute those responsible where appropriate, but also to identify systemic issues and shortcomings in the regulation, training and use of weapons and to ensure that such deficiencies are addressed[62] (see also Sub-Section III.6 *infra* regarding the effectiveness of investigations).

4. THE REQUIREMENT OF STRICT SCRUTINY

48. The ECtHR has repeatedly emphasized that where death results from the use of lethal force by law enforcement officials, such deprivations of life will be subject to "*the most careful scrutiny, taking into consideration not only the actions of the officers who actually administered the force but also all the surrounding circumstances"*, including the planning and control of the policing operation resulting in the death of an individual to assess whether, in the particular circumstances of the case, the authorities took appropriate care to ensure that any risk to life was minimized and were not negligent in their choice of action.[63]

49. The ECtHR recognizes that state agents may act on an honest and reasonable belief, which subsequently proves to have been mistaken.[64] It acknowledges that it would be unrealistic, in a rapidly developing situation, to require officers to possess perfect knowledge of events before acting. To this extent, a certain degree of license is given to officers confronted with an immediate threat.[65] It does not, however, permit the State retrospectively to presume the legality of lethal force in a manner which prevents the competent authorities from examining whether that license was properly exercised or dispense with the requirement for strict scrutiny of whether the belief was reasonably founded in light of the circumstances surrounding the operation as a whole.

50. As *McCann v. the United Kingdom* makes clear, officers may act lawfully on the basis of an honestly held and reasonably founded belief, even where that belief subsequently proves to be mistaken.[66] This does not, however, establish a general evidential presumption that State agents act lawfully. Indeed, the Grand Chamber in *McCann* subjected the operation to detailed scrutiny notwithstanding the soldiers' genuine belief that lethal force was necessary and found a violation of Article 2 on the grounds of the lack of appropriate care in the planning and organization of the arrest operation.[67]

51. The proposed amendment to the ISC contained in the Bill mandates that investigating judges and prosecutors presume an officer's use of firearms was absolutely necessary and strictly proportionate from the outset. Therefore, **the statutory presumption has the potential to undermine the obligation of strict scrutiny, which would be at odds with the procedural requirements of Article 2 of the ECHR.**

5. OBLIGATION TO CARRY OUT AN EFFECTIVE INVESTIGATION

62 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, para. 26.
63 See e.g., *McCann and Others v. the United Kingdom* [GC], ECtHR, no. 18984/91, 27 September 1995, para. 150; see also *Bubbins v. the United Kingdom*, ECtHR, no. 50196/99, 17 March 2005, para. 141.
64 *McCann and Others v. the United Kingdom* [GC], ECtHR, no. 18984/91, 27 September 1995, para. 200.
65 See e.g., *Ghaoui v. France*, ECtHR, no. 41208/21, 16 January 2025, paras. 109-113.
66 *McCann and Others v. the United Kingdom* [GC], ECtHR, no. 18984/91, 27 September 1995, para. 200.
67 *Ibid*., para. 212.

52. Article 2 of the ECHR imposes a procedural obligation on the State to carry out an effective investigation into any death or serious injury resulting from the use of lethal force by law enforcement officials (see Sub-Section III.1.2 *supra*).[68] The State's obligation to carry out an effective investigation is a distinct obligation which can give rise to a finding of a separate violation of Article 2 of the ECHR independently of the substantive obligations to protect the right to life and to prohibit the intentional deprivation of life.[69] The Minnesota Protocol,[70] as well as the jurisprudence of the ECtHR,[71] have identified key principles of an effective investigation, namely: promptness, thoroughness and adequacy, independence, and transparency and victim participation. In practice, the introduction of a presumption of lawfulness of the use of weapons may lead investigating authorities to proceed on the assumption that the use of force was lawful before the relevant facts have been independently established, thereby potentially diminishing the scope and thoroughness of the investigation.

53. Commenting on the Bill under review, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that "*the duty to investigate every potentially unlawful killing rests with the State*" and "*it cannot be displaced, in law or in practice, by requiring victims or their families to rebut a legal presumption that the use of potentially lethal force was lawful before the facts have been independently established.*"[72] Hence, the proposed presumption of lawful use of weapons should not be interpreted as requiring victims to provide evidence to rebut that presumption or to lodge a formal request, as a precondition for an investigation to be opened.

54. As further detailed below, the Bill under consideration raises concerns as to its compliance with the State's obligation to carry out an effective investigation, in particular with respect to the principles of thoroughness and adequacy of an effective investigation.

5.1. Promptness

55. Article 23 of the Minnesota Protocol provides that "*[t]he rights to life and to an effective remedy are violated when investigations into potentially unlawful death are not conducted promptly*".[73] In essence, this principle requires a duty to immediately report death or serious injuries to competent authorities, which is also stipulated in Article 22 of the UN Basic Principles,[74] As underlined in the ECtHR caselaw, Article 2 also requires investigations to be prompt[75] and to proceed with reasonable expedition.[76]

56. A prompt investigation is important because the first few hours after an incident are critical for obtaining crucial evidence such as camera footage, audiovisual recordings, phone messages, tests for gunshot residue, other forensic evidence and witness accounts, before evidence risks being lost, altered or tainted. Beyond the collection of evidence, the ECtHR also assessed that a prompt investigation of use of lethal force is essential in

68 *McCann and Others v. the United Kingdom* [GC], ECtHR, no. 18984/91, 27 September 1995, para. 161, where the Court underlined that the obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in the Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State.

69 Guide on Article 2 of the European Convention on Human Rights, ECtHR Registry, updated on 28 February 2026, para 158.

70 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, paras. 22-33.

71 Guide on Article 2 of the European Convention on Human Rights, ECtHR Registry, updated on 28 February 2026, pp. 38-45.

72 France: Proposed presumption of lawful police shootings could fuel impunity, UN expert warns, press release, 7 July 2006.

73 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, para. 23.

74 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 22.

75 *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no.5878/08, 30 March 2016, para. 237.

76 *Giuliani and Gaggio v. Italy* [GC], ECtHR, no. 23458/02, 24 March 2011, para. 305.

maintaining public confidence in compliance with laws and in preventing any perception of collusion in or tolerance of unlawful acts.[77]

57. The Bill may not, as such, impede the promptness of investigations, provided that the relevant legislation imposes (i) a duty for law enforcement to immediately report death or serious injuries incidents, and (ii) a duty on the competent state authorities to open and carry out an investigation without delay, and provided that the proposed presumption of lawfulness of the use of force by law enforcement officials is not interpreted as requiring victims to provide evidence to rebut that presumption or to lodge a formal request, as a precondition for an investigation to be opened.

5.2. Thoroughness and Adequacy

58. The Minnesota Protocol provides that "*investigations must be capable of: ensuring accountability for unlawful death; leading to the identification and, if justified by the evidence and seriousness of the case, the prosecution and punishment of all those responsible; and preventing future unlawful death*".[78] In a similar vein, the ECtHR case law states that investigations should be "*adequate",* meaning that investigations *"must be capable of leading to a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible*".[79] The Court specifically notes that this is not an obligation of results but of means.[80] Investigations must also be thorough, which means the authorities must always make a serious attempt to find out what happened. As underlined in the ECtHR case law, the authorities must take all reasonable steps to secure the evidence concerning the incident, including eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death.[81] The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements[82] and must apply a standard comparable to the *"no more than absolutely necessary*" standard required by Article 2 (2) of the ECHR.

59. The Minnesota Protocol approaches the thoroughness of investigations from a broader angle and stipulates that "*[i]nvestigations must seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death. The investigation should seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death and identify patterns where they exist".*[83]

60. **By introducing as a starting point of any investigation the presumption of lawfulness and absolute necessity and strict proportionality of the use of weapons by law enforcement officers, the proposed Bill risks undermining evidence collection methods and processes, which in turn may unduly impact the thoroughness and adequacy of investigations, regardless of how the presumption is interpreted and operates in practice. Ultimately, the proposed presumption risks undermining**

77 Guide on Article 2 of the European Convention of human rights, ECtHR Registry. See also *Tahsin Acar v. Turkey* [GC], ECtHR, no. 26307/95, 8 April 2004, para. 224; *Armani Da Silva v. the United Kingdom* [GC], ECtHR, 30 March 2016, para. 237.
78 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, para. 24.
79 *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no.5878/08, 30 March 2016, para. 243. See also, *Fraisse and Others v. France*, ECtHR, no. 22525/21 and 47626/21, 27 February 2025, para. 142.
80 *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no.5878/08, 30 March 2016, para. 233.
81 *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no.5878/08, 30 March 2016, para. 233.
82 *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no.5878/08, 30 March 2016, para. 234.
83 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, para. 26.

accountability for unlawful, unnecessary or disproportionate use of force by law enforcement officials, and may create perception of impunity, negatively impacting public confidence in law enforcement bodies, particularly given the gravity of any use of weapons and potentially lethal consequences.

61. If that presumption were understood as requiring victims or their relatives to first provide evidence rebutting it as a precondition for an investigation to be opened, it would lead to a significant reduction in the number of investigations into the use of force by law enforcement officials. This would not only breach the State's duty to investigate every potential unlawful death or serious injury on its own initiative, but would also impede the identification of potential patterns in use of force by law enforcement officers, and of systemic shortcomings or failures within law enforcement agencies, the broader form of scrutiny required by the Minnesota Protocol.

62. In addition, even if the presumption of lawfulness is not interpreted as requiring victims to provide evidence rebutting it or to lodge a formal request, as a precondition for an investigation to be opened, that presumption is nonetheless likely to significantly reduce the scope and thoroughness of investigations that are carried out. This is because the law enforcement officials would no longer have to prove that the use of force was lawful, that is absolutely necessary and strictly proportionate to the threat, but could instead rely on the statutory presumption of lawfulness. This risks narrowing the scope of investigations, which as a result may no longer be capable of determining whether the force used was or was not justified in the circumstances, contrary to the standards of adequacy and thoroughness.

5.3. Independence

63. Both the Minnesota Protocol and the ECtHR through its case law, consider that independence is a key principle of an "effective investigation".

64. The ECtHR has made clear that for an investigation into alleged unlawful killing by State agents to be effective, "*it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events*".[84] It has explained that this means "*not only a lack of hierarchical or institutional connection but also a practical independence*".[85] The ECtHR recognizes "*what is at stake here is nothing else than public confidence in the State's monopoly on the use of force*".[86]

65. Similarly, the Minnesota Protocol requires that investigators "*be independent institutionally and formally, as well as in practice and perception, at all stages. Investigations must be independent of any suspected perpetrators and the units, institutions or agencies to which they belong. Investigations of law enforcement killings, for example, must be capable of being carried out free from undue influence that may arise from institutional hierarchies and chains of command*".[87]

66. The Bill as such does not have a direct impact on the independence of investigations. However, it is noted that the UN Committee against Torture, in its Concluding observations on the eighth periodic report of France issued in 2025, called on France to "*ensure that all allegations of excessive use of force and ill-treatment are investigated*

84 Guide on Article 2 of the European Convention on Human Rights, ECtHR Registry, updated on 28 February 2026, para 169; and caselaw referenced therein, including *Armani Da Silva v. the United Kingdom* [GC], ECtHR, no.5878/08, 30 March 2016, para. 232; *Giuliani and Gaggio v. Italy* [GC], ECtHR, no. 23458/02, 24 March 2011, para. 300;
85 Ibid.
86 Ibid.
87 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, para. 28.

promptly, thoroughly and impartially by an independent body, that there is no institutional or hierarchical link between the investigators and the alleged perpetrators, that the perpetrators are prosecuted and, if found guilty, punished and that the victims or their families obtain redress".[88]

5.4. Transparency and Victim's Participation

67. Lastly, both the Minnesota Protocol and the ECtHR jurisprudence underline the importance of some degree of public scrutiny and involvement of the victim/next of kin as an important element of effective investigations.

68. Article 32 of the Minnesota Protocol states that "*investigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims' families"*. The same article provides the minimum standards for transparency as follows: "*States should, at a minimum, be transparent about the existence of an investigation, the procedures to be followed in an investigation, and an investigation's findings, including their factual and legal basis"*.[89]

69. The ECtHR has a more cautious interpretation and ruled that "*there must be a sufficient element of public scrutiny of the investigation*" but "*this requirement does not, however, go so far as to require all aspects of all proceedings following an inquiry into a violent death to be public as disclosure or for example, publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2 of the Convention*".[90]

70. The Bill may not have a direct impact on the transparency or participation of victim or victim's families in an individual investigation. However, if adopted, the Bill is likely to lead to narrower and less thorough investigations into potentially unlawful use of force by law enforcement officials, which may eventually erode public scrutiny over law enforcement actions, and consequently negatively affect public confidence in law enforcement.

6. State's Duty to Demonstrate the Absolute Necessity and Strict Proportionality of the Use of Force and Firearms

71. With the proposed amendments to Article L. 435-1 of the ISC, any use of weapons by law enforcement officials will be presumed to be lawful and to fulfil the requirements of absolute necessity and strict proportionality, unless evidence proves otherwise.

72. In effect, the amendment may raise concerns regarding the State's obligation to ensure effective accountability for the use of force by its agents. In particular, where relevant evidence is held primarily by law enforcement authorities which usually have superior or exclusive access to information capable of shedding light on all the relevant circumstances surrounding the use of force, the presumption could make it more difficult in practice to challenge the official account of an incident and establish whether the use of force was lawful, absolutely necessary and strictly proportionate. This could also have implications for the ability of victims and their families to seek effective redress through domestic and international mechanisms, where difficulties in establishing the relevant

88 Concluding observations on the eighth periodic report of France, UN Committee against Torture, CAT/C/FRA/CO/8, para. 29 (c).
89 The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, OHCHR, revised 2017, para. 32.
90 Guide on Article 2 of the European Convention on Human Rights, ECtHR Registry, updated on 28 February 2026, para. 187.

facts may affect their ability to substantiate claims concerning violations of international human rights obligations

73. In general, under international human rights law, any restriction or interference with human rights must be justified by the State in accordance with international and national human rights law. [91]

74. The principle *affirmanti incumbit probatio* applies, i.e., the burden of proof in relation to an allegation lies on the party which makes it, although in certain instances, it may be justified to derogate from this principle in case of evidentiary difficulties faced by one of the parties. In particular, the ECtHR has acknowledged that where events in question lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.[92] For example, in the case of the death of a person in custody, the Court has held that the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation of, in particular, the causes of the person's death.[93] In the context of the use of force by law enforcement officials, the ECtHR specifically acknowledged that the public authorities usually have "*far superior, or even exclusive, access to information and evidence capable of shedding light on why certain policing steps were taken and why the relevant law-enforcement authorities opted for a certain degree of force and for running the policing operation in the way that they did*".[94]

75. In addition, in the case *Yukhymovych v. Ukraine*, the ECtHR also stated that "*[t]he Government also bear the burden of proving that the force used by the police officers was justified; that it did not go beyond what was absolutely necessary and was strictly proportionate to the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention*".[95] This obligation for the State to demonstrate the absolute necessity and strict proportionality of the use of force is an integral part of the State's duty to protect life, deliver justice to victims of excessive or arbitrary use of force, and to prevent the recurrence of such acts.

76. Furthermore, the ECtHR has, in its case-law under Article 2 of the ECHR, held that when a person is killed as a result of a law enforcement operation, it is for the State to account for their death and notably, it is incumbent on the State to demonstrate that the force used by the law enforcement officers could be said to have been absolutely necessary and strictly proportionate to the achievement of one of the aims set out in Article 2 (2) of the ECHR.[96]

77. Against this background, the proposed presumption raises concerns regarding its compatibility with the principles established in the above-mentioned case law. If interpreted or applied in a manner that places an undue practical burden on those challenging the use of force to establish its unlawfulness, it could undermine the State's obligation to account for the use of force by its agents and demonstrate compliance with the applicable requirements of absolute necessity and strict proportionality.

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91 General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant : International Covenant on Civil and Political Rights, UN Human Rights Committee, adopted on 29 March 2004 (2187th meeting), 80th session, para. 6. Which provides that "*[w]here such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights"*

92 See e.g., *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, 11 December 2025, para. 328; *Salman v. Turkey* [GC], ECtHR, no. 21986/93, 27 June 2000, para. 100; and *Anguelova v. Bulgaria*, ECtHR, 13 June 2002, para. 111.

93 *Salman v Turkey* [GC], ECtHR, no. 21986/93, 27 June 2000, para. 100.

94 See e.g., *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, 11 December 2025, para. 330.

95 *Yukhymovych v. Ukraine*, ECtHR**,** application no. 11464/12, 17 December 2020, para 75.

96 See e.g., *Khamzatov and Others v. Russia*, ECtHR, no. 31682/07, 28 February 2012, para. 158.

7. AMENDMENT REPEALING L. 435-1 PARA.5 OF THE INTERNAL SECURITY CODE

78. Besides the presumption of lawfulness, the Bill also proposes to repeal the fifth statutory case (L. 435-1 para. 5, see para 28.v *supra*) when law enforcement officers are authorized to use their weapons and replaces it with a new provisions which, while overall re-stating existing paragraph 5 of Article L. 435-1, removes the requirement for them to wear their uniform or external and visible insignia indicating their status when they aim at *"preventing the recurrence, in the immediate future, of one or more murders or attempted murders that have just been committed, when they have real and objective grounds to believe that such a recurrence is likely based on the information available to them at the time they use their weapons.*" (sole Article, paras. 5 and 7 of the Bill).

79. As recommended by the UN Committee against Torture in its latest Concluding Observations on France, the authorities should "*[d]o the necessary to ensure that all law enforcement officers may be easily identified when on duty, including by ensuring that their individual identification numbers are visible and worn consistently*".[97] Requiring law enforcement personnel to be clearly and individually identifiable at all times contributes to ensure accountability at all levels and reduces the risk of impunity. In this respect, the ECtHR has held that the impossibility of determining the identity of law enforcement officers, presumed to have committed acts incompatible with the ECHR, is contrary to the Convention,[98] and that even if the circumstances may require anonymity, they should still be required to display a distinctive sign allowing them to be identified for questioning should the conduct of the operation be challenged later.[99] In absence of such a requirement, the Court concluded that this would deliberately create a situation of impunity making it impossible to identify the officers involved, to establish the responsibilities of senior officials, and to conduct an effective investigation.[100]

80. In light of the foregoing, with respect to the first amendment repealing the fifth statutory case (L. 435-1 para. 5), **it is recommended to reconsider the deletion of the requirement to wear uniform or external and visible insignia permitting their identification in proposed Article L. 435-1-II of the ISC.**

8. CONCLUSION

81. International norms recognize that the use of legitimate force by the State, including the use of lethal weapons, may be acceptable inter alia to fulfil its positive obligation to protect life and safety of individuals, and that the State may legitimately pursue an aim of ensuring the effective functioning of law enforcement bodies. At the same time, the State has an obligation to justify that any restriction or interference with human rights is in line with its obligations under international and national human rights law. [101] States are specifically required to establish a clear and effective legal and administrative framework governing the use of force and firearms, which limits their use to

97 UN Committee against Torture, Concluding observations on the eighth periodic report of France, 22 May 2025, para. 29 (e).
98 See e.g., *Krastanov v. Bulgaria*, ECtHR, no. 50222/99, 30 September 2004, paras. 59 and 60.
99 See e.g., *Krastanov v. Bulgaria*, ECtHR, no. 50222/99, 30 September 2004, para. 92.
100 See e.g., *Ataykaya v. Türkiye*, ECtHR, no. 50275/08, 22 July 2014, para. 54. See also, Statement "France: Proposed presumption of lawful police shootings could fuel impunity", UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 7 July 2026, in which the UN Special Rapporteur "*expressed concern about the removal of the requirement for officers to wear a uniform or visible insignia in certain circumstances. Unless accompanied by effective legal safeguards ensuring the identification of every officer and the traceability of every intervention involving the use of force, this amendment could hinder investigations and compromise the establishment of responsibility*".
101 General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant : International Covenant on Civil and Political Rights, UN Human Rights Committee, adopted on 29 March 2004 (2187th meeting), 80th session, para. 6. Which provides that "*[w]here such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights"*

circumstances in which it is absolutely necessary and strictly proportionate, providing adequate safeguards against arbitrariness, abuse and avoidable loss of life.

82. The findings of this opinion are without prejudice to the impartiality of the judicial investigation into the use of weapons, yet the proposed amendments may lead to unintended consequences, adversely affecting the effectiveness of investigation. As explained above, the Bill has the potential to weaken the conditions governing the use of weapons, thereby potentially downgrading the restrictive nature of the substantive requirements of absolute necessity and strict proportionality and to breach the requirement that the use of force and firearms be sufficiently and clearly regulated in domestic law (see paras. 43-45 *supra*), to undermine the obligation of strict scrutiny (see para. 51 *supra*), to impede the thoroughness and adequacy of investigations (see paras. 60-62 *supra*), and to undermine the obligation of the State to demonstrate that the use of lethal force by law enforcement officials was lawful, absolutely necessary and strictly proportionate to the circumstances of the case (see paras. 72 and 77 *supra*), in contravention of the procedural requirements of Article 2 of the ECHR. **Therefore, in light of the above, it is recommended to reconsider adoption of the Bill under review.**

9. Recommendations Related to the Process of Preparing and Adopting the Bill

83. OSCE participating States have committed to ensure that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*".[102] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives."*[103] The *ODIHR Guidelines on Democratic Lawmaking for Better Laws* underline the importance of evidence-based, open, transparent and inclusive lawmaking process.[104]

84. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation.[105] Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft laws throughout the legislative process.[106] It is noted that a petition against the Bill gathered over 730,000 signatures and that the petition procedure was closed without any feedback to the issues raised under it. While petition mechanisms are useful tools to ensure direct citizen engagement, appropriate feedback mechanisms should be in place to ensure their practical effectiveness of public consultations during the lawmaking process.[107]

85. Furthermore, it is also noted that the Explanatory Statement, which accompanies the Bill lists a number of reasons justifying the contemplated reform, but does not indicate whether the impact assessment of the proposed amendments was made.[108] Given the

102 See 1990 OSCE Copenhagen Document, para. 5.8.
103 See 1991 OSCE Moscow Document, para. 18.1.
104 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principles 5, 6, 7 and 12. See also Updated Rule of Law Checklist, Venice Commission, CDL-AD(2025)002-e, December 2025, Part II.A.6.
105 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), Principle 7.
106 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), paras. 169-170. See also ODIHR, Assessment of the Legislative Process in Georgia (30 January 2015), paras. 33-34. See also ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to Participate in Public Affairs.
107 See e.g., ODIHR, Opinion on the Draft Code on the Organization and Functioning of the Parliament of Moldova (Aspects Related to the Representative Functions of the Parliament), 7 July 2025, para. 55.
108 See "Proposition de Loi visant à reconnaître une présomption de légitime défense pour les forces de l'ordre, dans l'exercice de leurs fonctions", no. 691, introduced on 3 December 2024.

potential impact of the Bill on the right to life, an in-depth regulatory impact assessment, including on human rights compliance, is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.[109] In the event that such an impact assessment has not yet been conducted, the legal drafters are encouraged to undertake such an in-depth review, to identify existing problems, and adapt proposed solutions accordingly.

86. In light of the above, **the public authorities are encouraged to ensure that the Bill is subjected to inclusive, extensive and effective consultations, including with civil society, offering equal opportunities for women and men to participate.** According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of legislation and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Bill, should it be adopted.[110]

[END OF TEXT]

109 See e.g., ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), Principle 5. See also ODIHR, Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan (11 December 2019), Recommendations L and M; and Updated Rule of Law Checklist, Venice Commission, CDL-AD(2025)002-e, December 2025, Part II.A.6.

110 See e.g., OECD, International Practices on Ex Post Evaluation (2010).

ANNEX 1: BILL AIMED AT ESTABLISHING A PRESUMPTION OF SELF-DEFENCE FOR LAW ENFORCEMENT OFFICERS IN THE PERFORMANCE OF THEIR DUTIES

BILL

aimed at **establishing** *a* **presumption** *of* **self-defence**
for **law enforcement officers** *in* **the performance** *of their* **duties**,

ADOPTED BY THE NATIONAL ASSEMBLY
on first reading

– 1 –

Sole Article

① I. – *(Deleted)*

② II *(new)*. – The Internal Security Code is hereby amended as follows:

③ 1. Article L. 435-1 is amended as follows:

④ *a)* At the beginning of the first paragraph, the words “I. –” are added;

⑤ *b)* Paragraph 5 is repealed;

⑥ *c)* The following paragraphs II and III are added:

⑦ “II. – In the performance of their duties, officers of the National Police and members of the National Gendarmerie may make absolutely necessary and strictly proportionate use of their weapons for the sole purpose of preventing the recurrence, in the immediate future, of one or more murders or attempted murders that have just been committed, when they have real and objective grounds to believe that such a recurrence is likely based on the information available to them at the time they use their weapons.

⑧ “III. – When they use their weapons, National Police officers and National Gendarmerie personnel are presumed to have acted in one of the cases authorized by this article in accordance with the conditions of absolute necessity and strict proportionality. This presumption may, at any time, be rebutted by any evidence to the contrary.”;

⑨ 2° After the word “law,” the end of the first paragraph of Articles L. 445-1, L. 446-1, and L. 447-1 shall read as follows: “No. of aimed at recognizing a presumption of self-

defense for law enforcement officers in the performance of their duties, the provisions of this title, subject to the following adaptations:";

⑩ 3° After the word "Act," the end of Article L. 448-1 shall read as follows: "No. of aimed at recognizing a presumption of self-defense for law enforcement officers in the performance of their duties.";

⑪ 4° Article L. 511-5-1 is amended as follows:

⑫ *a)* After the word: "paragraph," the words: "of I" are inserted;

⑬ *()* At the end, the second occurrence of the words: "Article L. 435-1" is replaced by the reference: "I."

⑭ III *(new)*. – The Penal Code is amended as follows:

⑮ 1° In the last paragraph of Article L. 227-1, after the reference: "2°," the words: "of I" are inserted;

⑯ 2° The penultimate line of the table in the second paragraph of Articles L. 753-1, L. 763-1, and L. 773-1 is replaced by three lines worded as follows:

⑰

"

L. 225-1 through L. 226-2	
Section 227-1	No. of aimed at establishing a presumption of self-defense for law enforcement officers in the performance of their duties
L. 227-2 through L. 231-3	

"

Adopted in public session in Paris on July 7, 2026.

The President,

Signed: Yaël BRAUN-PIVET

ANNEX 2: ARTICLE L. 435-1 OF THE INTERNAL SECURITY CODE

Article L. 435-1 of the Internal Security Code

Version in effect since 2 March 2017

Enacted by Act No. 2017-258 of 28 February 2017—Art. 1

In the performance of their duties and while wearing their uniform or external and visible insignia indicating their status, officers of the National Police and members of the National Gendarmerie may, in addition to the cases mentioned in Article L. 211-9, use their weapons in cases of absolute necessity and in a strictly proportionate manner:

1° When attacks on life or physical integrity are made against them or against others, or when armed persons threaten their lives or physical integrity, or those of others;

2° When, after issuing two verbal warnings, they are unable to defend the premises they occupy or the persons in their custody by any other means;

3° When, immediately after two verbal warnings, they cannot compel persons seeking to escape their custody or investigations—and who are likely to endanger their own lives or physical integrity or those of others during their flight—to stop by any means other than the use of weapons;

4. When they are unable to stop, other than by the use of weapons, vehicles, boats, or other means of transportation whose drivers do not comply with an order to stop and whose occupants are likely, while fleeing, to endanger their own lives or physical integrity or those of others;

5° For the sole purpose of preventing the imminent recurrence of one or more murders or attempted murders that have just been committed, when they have real and objective grounds to believe that such recurrence is likely based on the information available to them at the time they use their weapons.