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**Deadline for online submission on the Normandie Université platform: 24 January 2025**

**COMMON PART: to be completed in all cases (submission to the establishment or region)**

## GENERAL INFORMATION

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Project title: The use of weapons by law enforcement officers

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Project acronym: USAFO

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Supporting institution: University of Caen Normandie

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Project location (name of laboratory and address): Institut caennais de recherche juridique (ICREJ, UR 967), UFR de droit, Université de Caen Normandie, Esplanade de la Paix, 14032 Caen Cedex 5.

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Project discipline: law (private, criminal, administrative)

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Project coordinators in the host laboratory :

Last name: Cerf-Hollender

First name: Agnès

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Name: Custos

First name: Dominique

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Research laboratory/team: Institut caennais de recherche juridique (ICREJ) Address: UFR  
de droit,  
Esplanade de la Paix  
14032 Caen cedex 5

**Doctoral school to which the thesis supervisor belongs:** *ED 98 Ecole doctorale Droit-Normandie*

**Project implementation :** from 01/09/2025 to 31/08/2028, i.e. 36 project months

## PROJECT SUMMARY

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**A summary of the project (maximum 2000 characters including spaces for each version):**

*Description intended for an uninformed/new audience on the subject. This paragraph may be used in communication documents if the project receives funding.*

French version

The theme of the project is "the use of weapons by law enforcement officers".

Members of the police force use their individual service weapons in both law enforcement and judicial police operations. This use of weapons is documented in the annual reports of the Inspectorate General of the Gendarmerie Nationale and the Inspectorate General of the Police Nationale. It is often the subject of considerable media coverage, particularly when it has resulted in death, mutilation or serious injury. These injuries may themselves be the cause of various public order disturbances, which are likely to lead to the use of weapons again. Various types of legal action may be taken as a result of such incidents, both against the officers who committed the act (personal criminal or civil liability) and against State for the actions of its officers (liability for fault or without fault, depending on the case). Faced with this phenomenon, the reactions of political and trade union leaders, as well as those of civil society, are varied, ranging from one extreme to the other. Some justify their unrestricted use in the name of protecting society from crime, others banning the carrying lethal weapons in the name of protecting the right to life and physical integrity. The aim of this thesis project is to draw up guidelines on the rights and obligations of officers, responsibilities and grounds for non-accountability (self-defence, authorisation by law and command by legitimate authority in particular), on the basis of an inventory of the responses provided by positive law, both domestic and European, to the use of weapons by law enforcement officers. This work is doubly useful. It will highlight both the positive points and the shortcomings of existing law. It will lead to the formulation of proposals for improvement in the interests of all, officers and litigants alike.

English version

Members of the police use their individual service weapons, during both types of law enforcement operations whether preventive or punitive. This use of weapons is attested by the annual reports of the Office of Inspector General of law enforcement agencies (the national gendarmerie or the national police). It is often the subject of significant media coverage, particularly when it has resulted in death, mutilation or serious injury, these harms themselves being the cause of various disturbances to public order, which are likely to lead to the use of weapons again. Various lawsuits may be initiated following such facts, both against the agents who committed the act (personal criminal or civil liability) and vicariously against the State (liability for fault or no fault depending on the case). This phenomenon elicit various reactions, going from one extreme to the other, from political and union leaders, and civil society. Some justify this use without restriction, in the name of protecting society against delinquency, others propose prohibiting the carrying of lethal weapons in the name of protecting the right to life and physical integrity. The thesis project aims to identify the principles governing the rights and obligations of members of the police force, responsibilities and causes of irresponsibility (self-defense, authorization of the law and command of legitimate authority in particular), based on an inventory of the responses provided by positive law, both internal and European, to the use of weapons by law.

enforcement. This work has a double utility. It will highlight both the positive points and the gaps in existing law. It will give rise to the formulation of proposals for improvement in the interest of all, agents and litigants.

**Keywords related to the project (5 words maximum) :**

**Arms - police - gendarmerie - responsibilities - fundamental rights**

## **PRESENTATION OF THE PROJECT :**

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**Context and objectives (maximum 2 pages):** specify whether the research is incremental (continuation, reinforcement of an existing theme) or innovative (new subject), local-national-international positioning, bibliography.

As is usually the case in law, the subject of the thesis has both an incremental and an innovative aspect.

The subject can be seen as incremental research in the sense that it will start from existing knowledge, based on texts, case law and the few works already carried out on the subject. However, these previous works are all more limited in scope, in they approach the subject of the use of weapons by law enforcement officers either from an exclusively historical perspective (works in legal history), or in an international context (works in public international law), or with regard to the ethical rules of law enforcement officers, or are limited to judicial police acts (works in private law and criminal science) or administrative police acts (works in public law).

The innovative nature of the proposed subject lies in its cross-disciplinary nature. It goes beyond the traditional divisions between public and private law, between domestic law and European and international law, and requires all these branches of law to be addressed. The context of the subject is thus plural.

### **1. Context**

The context of the thesis subject is as much private law as public law, domestic law as international law.

#### **1.1 Context of domestic law**

The use of weapons by law enforcement officers is a subject that lies at the confluence of public law and private law, as it may under both administrative police acts (public law) and judicial police acts (private law and criminal science). Research should therefore focus on the provisions of various codes: the Criminal Code, the Code of Criminal Procedure, the Internal Security Code, the Defence Code, the Customs Code and the Administrative Justice Code in particular. At the same time, research will also need to delve judicial case law (from the criminal division of the Cour de cassation) and administrative case law (from the Conseil d'Etat). The case law of the Constitutional Council could also be useful insofar as possible infringements of fundamental rights and freedoms are at stake. In addition, reports produced by the Inspectorate General of the National Police and Inspectorate General of the Gendarmerie, by the Human Rights Defender or by non-governmental organisations (e.g. Amnesty International) will support and illustrate the research.

#### **1.2 European and international law**

The use of weapons by law enforcement officers is a subject that cannot be dealt with by ignoring European law, in particular the European Convention on Human Rights. The European Court of Human Rights regularly receives applications alleging a violation of Articles 2 (right to life) and 3 (prohibition of torture and inhuman and degrading treatment) following violence committed by law enforcement officers in the performance of their duties. As a result, the Court has laid down important rules that domestic legislators and judges must respect. Its case law is therefore essential to the subject of this thesis. The Rome Statute and the work of the International Criminal Court may also be relevant.

## 2. Objectives

### 2.1 Theoretical objectives

The main theoretical objective of the proposed thesis is to draw up an inventory of the various legal consequences of the use of weapons by the forces of law and order, in order to identify the various responsibilities likely to be incurred (personal and state, civil and criminal) and their combination, while taking into account the possible grounds for non-liability provided for by positive law.

### 2.2 Practical and regulatory objectives

The research will not be satisfied with a simple inventory. It will reveal the gaps in the texts. The research will therefore aim to propose amendments and to draw up guidelines for the use of weapons that could be relevant in the context of training for law enforcement officers, in order to protect not only citizens who may be victims of the misuse of weapons, but also the officers themselves, in order to avoid or at least limit situations that could engage their responsibility and that of the State.

## Suggested bibliography :

### I. General works on criminal law and procedure

- B. Bouloc, Criminal Procedure, Dalloz, Précis series, 29<sup>th</sup>edn, 2023
- B. Bouloc, Droit pénal général, Dalloz, Précis series,
- J.- C. Crocq, Guide pénal - Guide des infractions, Dalloz, coll. Guide, 25<sup>th</sup>ed. 2024,
- E. Dreyer and O. Mouysset, Procédure pénale, LGDJ, coll. Cours, 3<sup>th</sup>ed. 2024
- T. Garé and C. Ginestet, Droit pénal et procédure pénale, Dalloz, Hypercours collection, 16<sup>th</sup>ed. 2024
- R. Merle and A. Vitu, Traité de droit criminel, Tome 1 Problèmes généraux de la science criminelle et droit pénal général, Cujas, 7<sup>th</sup>ed. 2000
- R. Merle and A. Vitu, Traité de droit criminel, Tome 2, procédure pénale, Cujas, 5<sup>th</sup>ed. 2000
- R. Parizot, Procédure pénale, Dalloz, coll. Sirey Université, 1<sup>re</sup>éd. 2024

### II. Special works

- W. Bourdon and V. Brengarth, Violences policières, le devoir de réagir, Gallimard, Tracts series, 2022
- F. Debove and O. Renaudie, (dir.), Homeland security: the new challenges, Vuibert, 2013
- F. Debove, Déontologie policière, Gualino, Lextenso, 2014
- L.-F. Lienard, Force à la loi: analyse juridique et judiciaire du port et de l'usage des armes par les forces de l'ordre, ed. Crépin Leblond, 2017
- P. Mbongo (ed.), Traité de droit de la police et de la sécurité, LGDJ, Les grands concours series, 2014
- J.- P. Valat and C. Michta, Guide de l'enquête pénale, LexisNexis, 2023
- H. Valmynck, Droit de la police, ed. Vuibert, 7<sup>th</sup>ed. 2021

### III. Books on administrative law

- Francis-Paul Benoît, La responsabilité de la puissance publique du fait de la police administrative, Recueil Sirey, 1946
- Willy Lubin, Libertés individuelles et police en droit américain et français, Montpellier Thesis, 1996

Jacques de Maillard, Wesley G. Skogan, *Police et société en France*, Presse de Science Po, 2023

Evelyne Pisier, *La responsabilité de la police*, PUF, 1972

Mathieu Rabaglia, *La responsabilité de l'Etat du fait des rassemblements et des attroupements*, Thesis, Toulouse, 2021

Olivier Renaudie, *Les transformations de la police administrative*, LexisNexis 2023

Miroslava Scholten (Ed.), *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability*, Elgard Publishing, 2017

Magali Tosello, *La responsabilité des maires en matière de sécurité publique*, Thesis, Nice, 2010

Marion Wujek-Moreau, *La responsabilité du fait des activités de police*, Thesis, Limoges, 2019

#### IV. Books on fundamental rights and freedoms

- V. Berger, *Les grands arrêts de la Cour européenne des droits de l'homme*, Sirey, 13<sup>th</sup>ed. 2014
- X. Bioy, *Droits fondamentaux et libertés publiques*, LGDJ, coll. Cours, 8<sup>th</sup>ed. 2024
- X. Dupré de Boulois, *Droit des libertés fondamentales*, PUF, coll. Thémis, 4<sup>th</sup>ed. 2024
- S. Hennette-Vauchez and D. Roman, *Droits de l'homme et libertés fondamentales*, Dalloz, Hypercours series, 5<sup>th</sup>ed. 2022
- H. Oberdorff, *Droit de l'homme et libertés fondamentales*, LGDJ, coll. Manuel, 9<sup>th</sup>ed. 2023
- *Droit des libertés fondamentales (collective work)*, Dalloz, précis, 9<sup>th</sup>ed. 2024
- *Major judgments of the European Court of Human Rights*

#### V. Reports

- Annual reports of General Inspectorate of the National Gendarmerie
- Annual reports of the Inspectorate General of the French National Police
- Annual reports, decisions and recommendations of the Human Rights Defender
- Activity reports of the Institut des hautes études de la défense nationale

**Detailed project** (scientific details on the subject, questions or issues addressed, programme and planned timetable) and prospects for the team/laboratory (3 pages maximum) :

#### 1. Project details and schedule

The first step will be to define the subject of the thesis by specifying its terms and therefore its scope. To this end, it will first be necessary to establish what is meant by 'weapons'. Legislation on this point will need to be studied in detail, in particular the different categories of weapons as regulated by the Defence Code. Natural and lethal weapons are at the heart of the thesis, but other weapons, non-lethal in principle, could also be included, as they are just as likely to cause serious physical harm or even death. It is also possible to include the use of techniques for maintaining order without the use of weapons (, use of martial arts, etc.) and thus open up the thesis more widely to the use of force beyond the use a weapon. Next, it will be necessary to identify the "forces of law and order" concerned, i.e. those authorised to carry and weapons in performance of their duties. Officers and agents of the national police force and members of the gendarmerie are obviously the first to be targeted, but it is also possible to include municipal police officers, prison staff and customs officers, who may also be required to use weapons.

Next, the legal consequences of the use weapons by law enforcement officers will need to be examined. The first step will be to determine all the criminal offences and their constituent elements: offences against life and limb (on this point, the voluntary or involuntary nature of the offence will have to be discussed), but also other offences, such as the offence of risk to others. Aggravating circumstances relating to the particular context of the thesis should also be discussed (in particular the use of a weapon, which is in itself an aggravating circumstance, and the fact that the person was a public official). As for liability, we will first have to examine the liability of the officers who fired the shots, and then the application to them of the justifying facts provided for in the Criminal Code (command of legitimate authority, legitimate defence, state of necessity in particular) and above all in the Internal Security Code, which authorises the use of weapons by law enforcement officers in several cases. These personal responsibilities (or lack of responsibility) are not the only ones. The liability of the State, whether for fault (in particular on the basis of article L 141-1 of the Code de l'organisation judiciaire) or without fault (in particular that provided for by article L 211-10 of the Code de la sécurité intérieure) should be the subject of major developments, which will also make it possible to address the rights of the direct or indirect victims of the acts of violence suffered. On this last point ( liability), a study of the provisions of the European Convention on Human Rights and the case law of the European Court relating Article 2 of the Convention (the right to life) and even Article 3 (prohibition of torture and inhuman or degrading treatment), both in their substantive and procedural aspects, seems essential. The thesis could also be enriched by a broader international approach, particularly with regard to the rules governing armed conflict and in the light of the Rome Statute and the case law of the International Criminal Court.

Finally, it will highlight any gaps in positive law. The aim could then be to make proposals to improve the training of members of the forces of law and order, in particular by drawing up a guide to the necessary and proportionate use of weapons and, more generally, of force, in order to prevent excesses, in the general interest, and to strengthen or re-establish trust with citizens.

## 2. Prospects for the research team

The subject of this thesis is fully relevant to the Institut caennais de recherche juridique (ICREJ, UR 967). The research work could in fact be linked to two of the centre's axes. Firstly Axis 1 'Vulnerability and fundamental rights', in that the thesis will address the right to life and physical integrity in its domestic, European and international dimensions. Secondly, area 2 'Private and public, domestic, comparative and international litigation', in that the various types of litigation likely to be brought before the domestic judicial and administrative courts, and possibly before the European Court of Human Rights, will be examined in greater depth.

### **Main actions and detailed timetable for implementation :**

Typical research work for a lawyer, carried out in a library. Consultation of authorities such as the Défenseur des droits, general inspectorate of the national police and the gendarmerie is planned from the first year of the thesis.

**Provisional timetable :**

The first year will be devoted essentially to researching bibliographical sources and consulting authorities (see above), thus enabling the subject to be defined as precisely as possible. In the second year, a very detailed plan will be drawn up, which will no doubt require further research. The third year will be devoted to writing.

**Human, material and financial resources used and requested to achieve objectives :**

Provision of an office and a computer on CRIAJ's premises

**Dissemination and capitalisation of results :**

Scientific results, publications, promotion, teaching or training approach, target audience (if applicable)

After the defence, the thesis may be published if it meets academic requirements. The thesis may also be submitted for a local or national thesis prize (in particular the Emile Garçon prize for theses in criminal law). A summary of the work will be published on UFR website. An application for qualification by the CNU is envisaged.

**PROJECT IMPACTS****Actions planned as part of the dissemination of Scientific, Technical and Industrial Culture (STIC) in addition to the student's doctoral organisation (1 page maximum) :**

The doctoral student will be integrated into the research team (ICREJ) and will participate in its activities as long as they are related to his/her subject. In particular, they will be able to take part in all the colloquia and conferences organised. He/she may also be asked to supervise Master 2 students preparing for an international moot competition (in particular the Cassin and Lombois competitions).

**Impact on the region :**

Expected spin-offs (social and economic links, outreach, CSTI, etc.)



The subject of the thesis will enable close links to be forged with local law enforcement agencies and the courts. It could also contribute to the training of law enforcement officers at national level.

## OPINION OF THE PROJECT MANAGEMENT

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### Thesis supervisor

Surname and First Name: Cerf-Hollender Agnès et Custos Dominique

Affiliated Institution/Organisation: UFR de droit

**A reasoned opinion from the thesis supervisor** on the proposed research, with regard to the scientific and technological objectives pursued and their place in the research orientations of the host laboratory:

The subject of 'the use of weapons by law enforcement officers' is particularly promising and innovative because of its cross-disciplinary nature (public law and private law; domestic law and European law), which justifies it being co-directed by two research professors, one a privatist and the other a publicist. It will provide food for thought and concrete proposals on how best to reconcile the imperatives of security and freedom that are shaking society and to which the legislator must respond. The project is fully integrated the ICREJ research team, and may be included in two of the team's areas of research (1 The subject would be particularly suitable for a candidate with a cross-disciplinary background in public law / private law (e.g. "Vulnerabilities and fundamental rights and Axis 2 "Private and public litigation, comparative domestic and international"). The subject would be particularly suitable for a candidate with a cross-disciplinary background in public and private law.

**Date:** 14 January 2025

**Surname and first name:** Cerf-Hollender Agnès

### **Reasoned opinion of the thesis co-director:**

It should be emphasised that the overall approach adopted is part of the merger of the two former legal research units in Caen. The aim is to bring together public and private law at a scientific level, precisely in a field where the functional versatility of law enforcement officers, who are in administrative or judicial police officers, means that the law must be understood as a whole.

Dominique Custos, co-director, 17 January 2025

### **Information on the last doctoral students supervised (maximum 5 last doctoral students):**

Future, production/publications linked to thesis research, etc.

-Théo Scherer, dissertation entitled "le principe du contradictoire en phase d'enquête de police judiciaire", co-supervised by Agnès Cerf-Hollender and Thierry Le Bars, defended on 8 November 2022 and published in 2023 by Mare et Martin. The work was awarded the Prix de thèse 2023 by the École doctorale droit Normandie and the Prix de thèse 2023 by the Institut caennais de recherche juridique. Mr Scherer was qualified by the CNU in 2023 and recruited as a lecturer at the University of Caen, UFR de droit. In addition to his participation

In addition to occasional participation in conferences, he publishes monthly case law commentaries on criminal procedure in the journal Dalloz actualité.

**The laboratory director will indicate the project fits in with the host laboratory's strategy:**

**Very favourable opinion. The proposed subject is a genuine doctoral research topic. It is fully in line with ICREJ's research priorities and policy. In addition, the subject is at the crossroads of the research fields of the two colleagues behind the project.**

**Date: 21 January 2025**

**Full name: Professor Thibault Douville**

**By 10 March at the latest, the laboratory director must provide (separately from the application) an inter-ranking (with justification) of the laboratory's applications, including establishment and 100% regional allocations (1 ranking per site for multi-site units), validated by the Unit Council. Please do not indicate any inter-ranking in this submission document.**