**KNIFE LEGISLATION AND HANDLING AT AIRPORTS**

**IN**

**CHILE**

# Weapons Act

*1.1 Which knives are considered weapons under your local law?*

Our legislation does not contemplate a special law that regulates the use or has a definition of what should be understood by “knives” but, the matter itself is regulated by our Criminal Code, in its Second Title on “Crimes and Simple Crimes Against the State Internal Security”.

In that chapter, article 132, there is a general definition of the term "white weapon", where knives are defined as such, indicating the following:

“When the uprisings referred to in this title use of weapons is assumed, any machine, instrument, utensil or sharp objects, sharp or blunt has been taken to kill, injure or strike will be understood under this word, even if there has not been a use of the same."

From the aforementioned legal definition, a "knife" should be understood as an instrument, utensil or sharpen or blunt object, being comprised in this definition objects such as knives, razors, blades, scissors, utility knives, folding knives, box cutters, among others.

*1.2 Is there a legal requirement to have a legitimate/justifiable reason for carrying and/or transporting a knife in the public? If so, for what kind of knives (lock knife, folding knife [depending on a special blade length or not?], fixed knife or any knife)?*

Our legislation does not have a precise regulatory body of norms that regulates the legal requirements or any "legitimate reason" that could allow the justification of bearing or transporting what we call "white weapons", including knives.

Our legislation, specifically Law No. 17.798 on “Control of Weapons and Explosives” and its regulations, defines the types of weapons that are subject to control, these being the following ones:

.- The materials for military use (weapons, ammunition, explosives or similar elements, built to be used in a war by the Armed Forces; as well as means for ground battles and naval and air combats, manufactured or specifically conditioned for this purpose).

* Firearms, whatever their calibre and its parts, devices and conforming pieces.
* Ammunition and cartridges.
* Explosives for industrial or mining uses or other legitimate uses, which require an authorization, as well as their parts and pieces, including detonators.
* Chemical substances that are essentially susceptible of being used in the manufacturing of explosives or ammunitions.
* Fireworks, pyrotechnic articles and other similar artefacts, along with their parts, devices and pieces.
* Weapons based on electrical pulsations, such as electric batons, or for electroshock and the like.
* The installations destined to the manufacturing, assembling, testing, storage or as depots of these elements.

As it is clear from the above, there is no expressly mentioning of "white weapons", but they are mentioned only in our Criminal Code when they are used in the perpetration of certain crimes.

In this regard, Article 288 bis of the Chilean Criminal Code expressly establishes the following:

*“Anyone who carries cutting blades or sharp weapons in venues that is selling alcoholic beverages that must be consumed in the same premises, will suffer the penalty of a minor prison sentence or a fine of 1 to 4 UTM.*

*The same penalty shall apply to those who in public shows or public venues, in educational establishments or on roads or public spaces in urban areas would carry such weapons, when the individual cannot reasonably justify their bearing."*

In this sense, the penal norm forbids the carrying of "white weapons" on public roads, public spaces and public shows in urban areas, when the individual CANNOT reasonably justify their use.

According to a research study made by the Penal Sciences Department of the Chile University Law School entitled: "Relevant Penal Judicial Aspects from Article 288 bis from the Criminal Code", they said, and we quote:

*“ … the justification referred to in the criminal definition must have the virtue of being adjusted to reason, being rational or plain and simply, being fair. It is not enough, therefore, to have any kind of justification, but only one that meets the requirements of rationality or of being adjusted to reason.*

*In this sense, there are not many legal sentences in our jurisprudence that address this problem of the exact meaning or scope of a "reasonable justification", because we believe that it is about a crime whose perpetrators risks minor penalties, which results, at the end of the day, in little concern to the participants. Indeed, we hardly have in our jurisprudence a few sentences that address very briefly the issue of the content of the "reasonable justification".*

It can be concluded that in case of being supporters of the thesis that deals with the absence of a "reasonable justification" as a requirement of the objective detailed in subsection 2 of article 288 bis of our Criminal Code, it would be always needed to be proved by the Prosecutor's Office that there is no convincing explanation, reasonable or satisfactory justification by the acting subject for the bearing of a sharp or "white weapon", which is what is required, in short, to have as configured a criminal action.

On the other hand, we do believe that this absence of reasonable justification is, otherwise, an objective condition of punishability.

In any case always the active subject has the possibility and may distort the evidence of the Public Prosecutor's Office and the cause of justification consisting of the "reasonable justification" is broad and generic, so that in the case of other causes of justification the criminal legislator indicates clearly and precisely which is the exact content of the cause of justification, nominating it, and determining its requirements, for example, "legitimate defence" or the so-called "state of necessity". To prove or try to prove, as a matter prior to the reasonable justification being required, that the bearing of the cutting or stabbing weapon being attributed to the subject did not exist or that its bearing occurred in places other than those expressed by the legislator, for example, in a private location, such as inside a vehicle, or in a rural sector, and in those cases the proof will involve, both on the criminal prosecutor part and the Defence part (in cases where the latter decides to assume an active role), regarding the existence or not of the bearing of the "white weapon" and/or that the place where that happened, obviously determining in these hypothesis that, in case of proving that there was no bearing of a sharp weapon or that it was verified in places other than those described by the criminal legislator - in the aforementioned rural sector, for example - the conduct will be "atypical".

*1.3 How must these concerned knives of point 1.2 be carried or transported in the public (e.g. in a closed or locked container)?*

According to the analysis made in section 1.2 above, there is no specific regulation in our legal system on how knives should be transported on public roads, but only the prohibition of carrying such weapons in certain locations and open roads or urban public spaces.

*1.4 Are there any public places which may be restricted by an authority (on certain days or at certain times) for carrying any knives or other dangerous tools (e.g. railway station, airport, market places, football stadium, event halls etc.)?*

In that sense, article 288 bis of our Criminal Code is, in our understanding, quite clear when defining the prohibition of carrying any knives or other dangerous tools in public roads, public urban spaces, which comprise all the places mentioned in your question too.

*1.5 How is the blade length measured (only the cutting blade or including the blade shank)?*



To that purposes, we must again refer to the legal definition given by article 132 of the Criminal Code by pointing out the following:

*“When the uprisings referred to in this title use of weapons is assumed, any machine, instrument, utensil or sharp objects, sharp or blunt has been taken to kill, injure or strike will be understood under this word, even if there has not been a use of the same."*

The legal definition reproduced above refers to any machine, tool, utensil or object CUTTING, PENETRATING or BLUNT WEAPON, which forces us to analyze the meaning of each of the words highlighted in capital letters:

* The expression CORTANTE (CUTTING), according to the Dictionary of the Royal Spanish Academy refers to the verb to "cut", and this in its first meaning, means "divide something or separate its parts with a sharp instrument." According to this definition, the sharp cutting function of the instrument is performed by the blade, but not the shank.
* PUNZANTE (PENETRATING) according to the Dictionary of the Royal Spanish Academy refers to the adjective "that penetrates", and this in its first meaning, means "to hurt with a pointed object." According to these definitions, the sharp cutting function of the instrument is performed by the blade, but not the shank.
* CONTUNDENTE (BLUNT WEAPON), according to the Dictionary of the Royal Spanish Academy, it defines it in its first meaning as “saying of an instrument or an act: that produces a bruise” and contusion is defined as the “damage received by some part of the body by a blow but that does not cause an external injury”. Based on this definition, it would also comprise the knife shank.

From the above, it should be understood that the length of the knife is measured as a whole, that is, both the blade and the shank.

*1.6 Are there any further dangerous objects which also fall under the Weapons Act?*

The other weapons contemplated in our legislation are those described by our Law Nº 17.798 on “Control of Weapons and Explosives” and its regulations and are the following ones:

* The materials for military use (weapons, ammunition, explosives or similar elements, built to be used in a war by the Armed Forces; as well as means for ground battles and naval and air combats, manufactured or specifically conditioned for this purpose).
* Firearms, whatever their calibre and its parts, devices and conforming pieces.
* Ammunition and cartridges.
* Explosives for industrial or mining uses or other legitimate uses, which require an authorization, as well as their parts and pieces, including detonators.
* Chemical substances that are essentially susceptible of being used in the manufacturing of explosives or ammunitions.
* Fireworks, pyrotechnic articles and other similar artefacts, along with their parts, devices and pieces.
* Weapons based on electrical pulsations, such as electric batons, or for electroshock and the like.
* The installations destined to the manufacturing, assembling, testing, storage or as depots of these elements.

*1.7 Are there any exceptions?*

If the question aims only regarding the "carrying or possession" of "white weapons" or "cutting knives", our Criminal Code establishes in its Article 288 bis as an exception in relation to the carrying of weapons, that they are allowed in NON-URBAN locations. In urban zones or public spaces the subject must "reasonably" prove the carrying of the weapon.

As for the carrying of FIREARMS, they are regulated by Law No. 17.798 that establishes as an exception in relation to the carrying of them:

*“The Armed Forces and Carabineros de Chile are exempted from these prohibitions. The Investigative Police of Chile (PDI), the Gendarmerie of Chile (Prison Guards Association) and the General Directorate of Civil Aviation will be exempted only with respect to the possession and possession of light and semi-automatic and automatic weapons, and of chemical, tear gases, paralyzing gases or explosives and grenades, up to the amount authorized by the Minister of National Defence, at the directions of the Director of the respective Service. These weapons and elements may be used in the manner indicated in the respective Organic and Institutional Functioning Regulations. ”*

This rule says that only the Armed Forces and Chilean Police, the Chilean Investigative Police (PDI), the Chilean Gendarmes of Chile (prison guards) and the General Directorate of Civil Aviation are entitled to the carrying and possession of the weapons indicated in the aforementioned norm without the need to register them before the competent authorities.

In order for common citizens to carry firearms, they must carry out the relevant procedures before the competent authorities in our country that authorize them for register them in the holder's name.

Their registration only authorizes their holder or carrier to keep the weapon in the location declared as their home or real estate corresponding to his residence, to their place of work or to the place they intend to protect. The competent authorities will only allow the registration of the weapon when, in their opinion, its holder or carrier is a person who, by his background, makes it possible to presume that will comply with the provisions of the preceding paragraph.

If the holder or carrier should be absent from the authorized place where he keeps the weapon, he may deposit it, for security reasons, before the relevant authority controlling his domicile, which, in the manner provided by the regulations, will issue a free transit guide for his transport, keeping and storage. Also, the owner or carrier, previous to a well justified request, would be authorized to transport the weapon for a period of 60 days. The authorization should indicate the specific days in which the weapon could or should be transported.

Likewise, if the holder or carrier, under any circumstance requires to transport the firearm a different day as the one indicated in the authorization, he should be able to request, only once, a special permission to the corresponding controlling authority.

People who at the moment of registering a firearm with the supervising authority, are credited as sport persons or hunters will have the right, in the same act, to obtain a permit to transport the weapons they use for these purposes. The aforementioned permit will be granted for a period of two years and will not be authorized for carrying loaded weapons on public roads.

*1.8 What are the consequences for a legal offense?*

If your question addresses the illegal use of "white weapons" sanctioned by Article 288 bis of our Criminal Code, it establishes a sentence depriving of freedom the offender in its minor degree, i.e. from 61 days to 540 days in prison, or a financial fine for fiscal benefit of an amount expressed in US dollars ranging from US$60 to US$250 aprox.

It would be up to Judge reviewing the criminal offence to determine which sentence to apply for each case.

*1.9 Are there any legislative developments? If so what do they concern?*

At the moment, there are no foreseeable changes to our legal system in this respect.

# Airports

* 1. *According to the Official Journal of the European Union laying down detailed measures for the implementation of the common basic standards in aviation security, any pointed or sharp objects which may cause serious injury, including a knife with a blade more than 6cm are not allowed to be taken into the security restricted areas or on board of an aircraft.* 
     1. *Are there any further national regulations to be considered in this respect?*

N/A

* + 1. *If your country is outside the EU, what are the corresponding local regulations?*

Our country is not part of the EU countries regulations in that respect, however, we do have very clear regulations that establish the restrictions in the carrying of weapons (cutting elements) in restricted areas such as boarding ships or aircrafts.

In fact, the authority or agency in Chile in charge of knowing and sanctioning the infractions contained in the Aeronautical Code, the laws and regulations on aeronautics, as well as in charge of the inspection and revision of luggage in airports is the “General Directorate of Civil Aviation”, known by its letter “DGAC”.

Before entering the restricted areas of an airfield or airport or when boarding an aircraft, any person, passenger or user must undergo a thorough inspection, defining the items that could be removed or retained, if they were considered dangerous.

In accordance with the DGAC regulations (www.dgac.gob.cl), it is not allow the access to restricted areas of an aerodrome or to aircrafts of people or luggage that when checked at the Security Control Post carry any items that can be used to threaten the safety and integrity of the facilities, aircrafts and their occupants.

It is specifically forbidden to have in the aircraft any blunt or sharp elements such as scissors, knitting sticks, nail file, knives, blades, nail clippers, penknives, letter openers, canes, dumbbells and tools that can be used as a sharp or cutting weapon (drills, drills tips, screwdrivers, hammers, pliers, wrenches, etc.).

* 1. *May the airports/airlines in your country issue any further (stricter) regulations for forbidden items?*

The specific regulation on this matter is detailed in our Law Nº 18.916 approved by the Chilean Aeronautical Code and by the DGAC regulations, according to the answer contained in the previous item.

* 1. *May a pair of scissors or a saw be included in a pocket knife with a blade of max. 6cm? If so, is the size of the pair of scissors or the length of the saw of relevance?*

In accordance with the DGAC regulations are forbidden: knives, scalpels, letter openers and metal penknives with blades longer than 4 cm.

* 1. *What is considered as a sharp object besides knives?*

In general, any item that can be used as a sharp or cutting weapon.

In this sense and by way of example and without being limited, they would include axes, arrows, darts, javelins, ice skates, automatic or spring knives of any length, knives, scalpels and metal penknives with blades of a length greater than 4 cms, machetes, sabres or blades, swords and canes; scissors with tips exceed 4 cm in length (except those with blunt tips); ski poles and hiking poles, camping stakes; tools that can be used as sharp or cutting weapons (drills, drills tips, screwdrivers, hammers, pliers, wrenches).

* 1. *Are there any further aviation security regulations with respect to the Victorinox (pocket) knives to be observed?*

The VICTORINOX (pocket) knives must abide by the regulations, limitations and prohibitions established by the DGAC, as by definition, they are considered a penetrating or cutting weapon.

* 1. *Are there any changes intended in the near future? If so what do they concern?*

There are no changes intended in that respect in the near future.

Ibach, Switzerland, 6 December 2019

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