



THE LACK OF LEGISLATION ON THE CARRYING OF CUTTING WEAPONS IN ECUADOR

BARCOS ARIAS IGNACIO FERNANDO¹, VEGA ROSERO EMMY²

Universidad Regional Autónoma de Los Andes Babahoyo. Ecuador.

¹E-mail: ub.ignaciobarcos@uniandes.edu.ec

ORCID: <https://orcid.org/0000-0003-2779-5512>

²E-mail: db.emmyvr30@uniandes.edu.ec

ORCID: <https://orcid.org/0009-0004-1410-8079>

ABSTRACT

This article was carried out, on a day-to-day basis, mainly in the field of security, as is the case of the National Police, which are in charge of verifying the requirements that must be met for the carrying or possession of weapons, whether they are of fire or white, however, there is a legal vacuum in the Ecuadorian criminal legislation in relation to the carrying and possession of white weapons that is the central point of the development of the investigative work, since it is essential that it is typified in the Organic Code Comprehensive Penal, the prohibition of the carrying of illegal bladed weapons, therefore, the objective of this work was that the prohibition of the carrying of bladed weapons should be typified in our criminal legislation, since many of the robberies committed by criminals, They execute them with white weapons. The methods applied in this research work are inductive-deductive in dealing with the problem from the general to the specific, giving way to the data in a certain valid way, to reach a deduction. In addition, the analytical-synthetic method was applied in the analysis of the consequences of the possession and use of knives, which results in a high rate in the field of criminality, so it is necessary that the Ecuadorian criminal legislation typifies the Prohibition of possession and carrying of bladed weapons.

Keywords: white weapons; typify; prohibition; delinquency; criminal laws.

INTRODUCTION

In Ecuador, the unjustified carrying of knives is not legislated either as a crime or as a contravention, with the exception of contravention in sports venues and mass attendance, so the Public Force cannot learn people who unjustifiably carry such weapons, empowering them the law only in raids to remove them.

This lack of legislation means that every day criminals use these weapons to intimidate their victims and in many cases take their lives. Since knives are sharp, sharp, sharp and blunt short elements such as knives, knives, daggers, stabs, punches, among others, which are used as defensive or offensive weapons to threaten, injure or take the lives of people.

Being common in our society that the offender uses knives, to intimidate people when they are traveling on public roads and steal their belongings; which also happens in other societies such as Peru, which is even considered aggravated robbery when a person goes with a cell phone in his hand and is intercepted by two or more people who are equipped with a weapon, whether it is a knife or not, without having used the violence that manages to obtain possession of the assets of the injured party that have a patrimonial valuation (Chipana, 2022).

It is urgent to legislate on this type of weapon, since crime is currently a latent problem throughout the country; The same that appropriates these elements to commit their misdeeds, knowing the criminals that there is no penalty for the carrying of these, since these elements are not regulated by the competent authority, that is, that their carrying is not typified within the Ecuadorian criminal law. When talking about carrying knives means carrying a weapon that can be, knife, scissors, stiletto, machete, knife among other objects (López, 2022).

Article 76, paragraph 3, of the Constitution of the Republic of Ecuador establishes that "No one may be tried or punished for an act or omission that, at the time it was committed, is not classified by law as a criminal, administrative or other offence; nor shall a penalty not provided for by the



Constitution or the law be applied. A person may only be tried before a judge or competent authority and in compliance with the procedure proper to each procedure."

It should be noted that the problem addressed is directly related to one of the main axes of the Opportunity Creation Plan 2021 - 2025 such as the integral security axis since it aims to strengthen integral security, for this state policies focused on facing problems that affect society on a day-to-day basis must be established. such as delinquency and organized crime.

In Latin American countries such as Colombia, in the Colombian Penal Code there is no article that typifies the illegal carrying and possession of knives; but, there is a District Agreement 517 of 2012, which prohibits the carrying, sale and purchase of all types of knives in public space, in sports, cultural or recreational scenarios (García, 2011). Likewise, in the Argentine Penal Code there is no article that typifies the aforementioned elements, but there is the Legislature of the Autonomous City of Buenos Aires where it punishes with force of law the carrying of knives; Similarly, Chilean Criminal Law has a criminal norm on the illegal carrying and possession of knives, imposing a penalty of minor imprisonment in its minimum degree or a fine of 1 to 4 UTM (Tax Unit of Fines).

According to the (UNICEF, 2014), in countries such as Brazil, Colombia, El Salvador and Venezuela, 28% of deaths correspond to minors between 10 and 19 years old, concluding that although young men die especially in violent acts (daily), a significant percentage is also injured by punches, kicks and attacks with knives; since this type of weapons is easy to obtain, they are also available to every pocket, because they are very economical, unlike firearms that have a fairly considerable value, which in many cases the cost is not available to young people (Montañez, 2016).

In the whole world every day insecurity and violence advances, it is the case of Ecuador, where crime advances and security leaves much to say to each inhabitant, bringing to debate an issue as controversial as the use of weapons for civilians as an option of self-defense, despite the fact that in our Ecuador the carrying and possession of firearms is not free, Its control is not effective, even more so when we focus on a weapon that does not have a corresponding legal sanction as is the case of knives, recent data reveal that 59% of violent deaths have occurred due to the use of this type of weapons, a dagger, a knife to scissors are utensils used for such crimes, from January to October 2020, violent deaths by firearms have been registered with an approximate amount of 614 victims and with knives 276 deaths (Primicias, 2020).

According to studies carried out on the use of knives in Argentina, it appears that the admissions of knife wounds in the emergency of the Centennial Provincial Hospital from 2018 to 2019 were 246 cases, with prevalence in the male sex, in the age range of 27 to 59 years, with sharp and sharp injuries produced at home and on public roads; being higher revenues in 2019, with a peak in the month of July. This denotes the continuous use of knives to commit crimes, it is necessary that legislation implement greater control in this type of weapons, so that it does not continue to cause harm to society (Dohle, 2022).

Calderón (2013) states that in Bolivia the Institute of Forensic Investigations (I.D.I.F.) agency where the forensic medicine service is provided, are referred the reported cases of citizens who have been victims of some type of physical aggression or accidents involving a legal process. Most of them have traumatic injuries that affect them to a lesser or greater degree and in many cases these injuries are from knives located on the face or another part of the body. As you can see that people are victims of traumatic injuries caused by knives.

The right to bear arms was born in England in the Middle Ages, once the antecedents of Common Law and parliamentary monarchy were established. In 1181 Henry II promulgated a law that empowered every man the independence of having arms in the service of the monarch. In other words, the right to possess weapons was linked to military service. In 1689 the right to have arms for personal custody of Protestants has been identified in what is its updated interpretation. This right formed part of the Bill of Rights testimony of the same year, which is included in today's undrafted Constitution of the United Kingdom. .(Rendón, 2016)

What is a knife?

It is established that a knife is that object or tool with the ability to cut, wound and puncture an individual or living being either by the shape or characteristic of its edges or tip, these weapons are



used since ancient times so they are handmade or more elaborate in an industrial way, The bladed weapons for their ease of handling in some cases associated with their shape or size are used in attacks where a melee attack occurs since unlike a firearm this does not need ammunition or be reloading to inflict damage on its opponent, a fairly clear difference between a knife and a firearm is related to the possibility of loading one with itself and that knives are not regulated while to have a firearm you need a special license.

Classification of bladed weapons

According to their characteristics, bladed weapons are classified according to their nature as follows:

Typical or atypical

Within the typical according to their design they have the purpose of cutting, drilling, dislacerar, etc., such as knives, knives, sabers, axes ... and atypical ones that have not been specifically designed for it, including screwdrivers, spatulas, razor blades, scissors and others.

Conventional and unconventional

Conventional weapons were specifically manufactured for hand-to-hand combat, duel or defense, within this type of bladed weapons are: sabers, bayonets, spears; and, the unconventional, were not created expressly for this purpose, these being: knives, razors, razor blades, fractured bottlenecks (Chub, 20216).

The Organic Integral Criminal Code 2014, (hereinafter COIP), establishes that a knife is understood as those sharp, sharp, sharp and short blunt elements such as knives, knives, daggers, stabs, punches, mittens, clubs, machetes, hooks, leznas, mallets, axes, feather cutters, goat's legs, stockings, daggers, sabers, swords or any other object with similar characteristics, which can be used as weapons of a defensive or offensive nature to threatening, injuring or taking the life of people.

Carrying knives

As far as the criminalization of the possession of weapons is concerned, it dates back to the Middle Ages in England, where any individual was empowered independently to have weapons, as long as these people are willing to participate in military disputes in defense of their territories. From the sixteenth century, the possession of weapons was associated with the custody of people who failed to comply with local provisions, this being the interpretation used today (Rendón, 2016). But at present the offender intimidates the victim with knives to take their belongings, work carried out by the police on the day, day of their activities (Meneses, 2022).

MATERIALS AND METHODS

The paradigm of applied research consisted of the quali-quantitative, since doctrinal, theoretical and normative elements were used in order to examine a specific fact from which viable results were obtained with respect to a specific situation; as well as, applied statistics as a basis for the relevant development of analysis and interpretation.

The type of research is descriptive, since it analyzes how the problem of carrying knives and the criminal phenomenon that has resulted from such carrying is affecting society.

The methods applied in this research consisted of the inductive-deductive when dealing with the problem from the general to the specific, giving way to the data in a certain valid way, to reach a deduction from a reasoning of logical form or assumptions. In addition, the analytical-synthetic method was applied in the analysis of the consequences of the possession and use of knives, observing the lack of criminalization within Ecuadorian criminal legislation, observing the shortcomings presented by the criminal type.

Population and sample

The population involved in this research was concentrated in law professionals from the Babahoyo canton province of Los Ríos. Being the census-type sample, that is, 24 legal professionals.

Composition	Population	Sample
Judges and secretaries of the Criminal Judicial Unit based in the Babahoyo canton	17 officials	Total



Defenders of the Public Defender's Office based in the Babahoyo canton	7 defenders	Total
Total	24	Total

Technique

The technique applied to the present research work consisted of the survey, through which it is possible to know about the existing problem of carrying knives and the consequences that they entail.

Instrument

The instrument applied consisted of the questionnaire, through which the survey can be expedited, to the legal professionals of the Babahoyo canton.

It should be noted that all the results obtained are reflected in tables as detailed below:

Results

1. How would you describe the lack of criminalization regarding the possession and carrying of knives?

Board 1
Question 1

Question 1

Description	Frequency	%
Deficient	18	75%
Inefficient	6	25%
Efficient	0	0%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

75% of the professionals consider that the lack of classification in relation to the possession and carrying of knives is deficient in terms of the sanctions that these people should receive, and the remaining 25% consider that it is inefficient as shown in table 1.

2. Do you think that the regulations governing the carrying and possession of knives in Ecuador should be evaluated?

Board 2
Question 2

Question 2

Description	Frequency	%
Yes	23	96%
No	1	4%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

23 (96%) of the 24 involved in the data collection consider that it is appropriate to evaluate the regulations governing the carrying and possession of knives in the country in search of a solution to this social problem and only 1 person (4%) considers that the evaluation of this norm is not necessary.

3. Do you consider that a system of sanctions should be implemented for the possession and carrying of knives in public spaces in Ecuador?



Board 3
Question 3

Question 3

Description	Frequency	%
Yes	24	100%
No	0	0%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

All participants indicate that they fully agree that a system of sanctions applicable to people who commit the action of carrying knives in public spaces should be implemented, in order to guarantee the well-being and integrity of the users who make use of these places.

4. Do you think that with the implementation of a system of sanctions for the possession and carrying of knives, the crime rates related to these actions will decrease?

Board 4
Question 4

Question 4

Description	Frequency	%
Disagree	1	4%
Disagree	4	17%
I agree	19	79%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

79% of the participants agree that with the implementation of a system of sanctions the criminal acts associated with the carrying and possession of knives will decrease, 17% agree a little and 4% strongly disagree it is considered that with the sanctions will not reduce crimes in relation to the carrying and possession of knives.

5. Do you consider that in recent years due to the non-existence of this type of regulation, acts of violence associated with the use of knives in the country have increased?

Board 5
Question 5

Question 5

Description	Frequency	%
Yes	8	33%
No	16	67%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

In the absence of a regulation that sanctions the possession and carrying of knives, 67% of the participants consider that this is not associated with violent acts since they consider that antisocials incur in this type of crimes without reason of knowledge, while 33% consider that offenders commit these actions with full knowledge that they would not receive a sanction.

6. In your opinion, does the lack of criminalization of the possession and carrying of knives in the country represent a social problem that affects people?

Board 6
Question 6

Question 6



Description	Frequency	%
Disagree	0	0%
Disagree	2	8%
I agree	22	92%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

92% of those involved in the data collection establish that they agree that the lack of regulations associated with the possession and carrying of knives is positioned as a social problem that affects people and 8% disagree indicating that this type of action is not a problem for society in general.

7. Under your personal consideration, what do you think should be the sanction that should be implemented in terms of the possession and carrying of knives in public spaces in Ecuador?

Board 7

Question 7

Question 7		
Description	Frequency	%
2 - 4 years	3	12%
4 - 6 years	12	50%
6 - 8 years	9	38%
TOTAL	24	100%

Note: Prepared by: Ignacio Fernando, Barcos Arias

Analysis and interpretation of results

It was consulted on the sanctions that these professionals involved in the collection of data would impose on people who incur in the carrying and possession of knives in public spaces and 50% consider that the sanction should be 4 to 6 years of deprivation of their liberty, 38% establish that the penalty should be 6 to 8 years in prison and 12% of the participants establish that the sanction should be imposed 2 to 4 years' detention.

DISCUSSION

As can be seen that, of 24 public officials knowledgeable about the law, the majority agree that the carrying of knives should be legislated, to reduce crime rates and therefore deaths and injuries with this type of weapons.

Problems that occur in other Latin American countries, which do not have well-defined legislation on the illegal carrying of knives; as is the case of Colombia, which only has a District Agreement 517 of 2012, which prohibits the carrying, sale and purchase of all types of knives in public spaces, in sports, cultural or recreational settings (García, 2011). Similarly, countries such as Bolivia and Brazil, where legislation on the illegal carrying of knives is not well defined, which, although they have some ordinance, it does not have the same weight as the criminalization in criminal legislation.

Knives are used by criminals to commit robberies, with which they intimidate their victims, knowing that, if the public force finds such weapons in their possession, they will only be confiscated but not imprisoned because there is no regulation that punishes with imprisonment for illegally carrying such weapons, as what happens in Mexico where they use motorcycles to commit crimes using knives, which are only confiscated (Aguirre, 2019).

In the current century it is necessary that there are serious legislations that typify this type of weapons, since, with the advance of science and technology, it is easy to transform materials into different objects such as knives, knives, stiletto, among others; so that the diversity of these has expanded considerably since objects with different edge, shape, and use in general can be visualized (Álvarez, 2016).



Therefore, we must follow examples such as the Criminal Code of Chile, which provides in article 288 for the penalty of minor imprisonment in its minimum degree:

1) The following new Article 288 bis shall be inserted:

"Article 288 bis. - Anyone who carries sharp or sharp weapons in places selling alcoholic beverages that must be consumed in the same premises shall be punished by minor imprisonment in its minimum degree or a fine of 1 to 4 UTM.

The same penalty shall apply to anyone who, in public entertainments, in educational establishments or on roads or public spaces in urban areas, carries such weapons, when he cannot reasonably justify their carriage."

That although it is true that they are not harsh penalties, it is no less true that it is a beginning of the need to typify the unjustified carrying of knives, which in some countries have not typified; so that this article of Chilean criminal legislation has been analyzed, both paragraphs one and two (Rohde, 2018).

In the case of Ecuador, there is also no legislation on the prohibition of the illegal possession and carrying of knives, existing typified in the COIP only one contravention in sports scenarios.

CONCLUSIONS

It concludes the non-existence of a regulation in Ecuadorian criminal legislation that regulates the possession or carrying of knives, which is a social problem that directly affects Ecuadorian society, since the offender takes advantage of the legal vacuum, to commit his misdeeds, because he knows that only the weapon will be confiscated, but he shall not be deprived of his liberty.

That, the problem of the illegal carrying of knives is not only in Ecuadorian legislation, but in some countries in Latin America, which do not have criminal legislation that typifies as a crime or contravention the illegal carrying of the aforementioned weapons.

That, although it is true that in certain cities of Ecuador they are trying to create ordinances for the prohibition of the carrying of knives, as is the case of the Metropolitan Council of Quito that approved the ordinance that prohibits the carrying of knives in the city, it is no less true that it is only an ordinance, but it is not typified in the governing and sanctioning body such as the COIP to apply at the national level the prohibition of the carrying of such weapons.

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