

LEY DEL MENOR

LEY ORGÁNICA 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores. (BOE 13/1/2000)

EXPOSICIÓN DE MOTIVOS

1. La promulgación de la presente Ley Orgánica reguladora de la responsabilidad penal de los menores era una necesidad impuesta por lo establecido en la Ley Orgánica 4/1992, de 5 de junio, sobre reforma de la Ley reguladora de la competencia y el procedimiento de los Juzgados de Menores; en la decisión aprobada por el Congreso de los Diputados el 10 de mayo de 1994, y en el artículo 19 de la vigente Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

2. La Ley Orgánica 4/1992, promulgada como consecuencia de la sentencia del Tribunal Constitucional 36/1991, de 14 de febrero, que declaró inconstitucional el artículo 15 de la Ley de Tribunales Tutelares de Menores, texto refundido de 11 de junio de 1988, establece un nuevo flexible para que los Juzgados de Menores puedan determinar las medidas aplicables a estos en cuanto infractores penales, sobre la base de valores especialmente el interés del menor, considerando por razones a tales efectos a las personas comprendidas entre los doce y los diecisiete años, fundamentalmente, encomienda al Ministerio Fiscal la iniciativa procesal, y le concede amplias facultades para acordar la terminación del proceso con la intención de extirpar, dentro de lo posible, los efectos aflictivos que el mismo pudiera llegar a producir. Asimismo, confiere al equipo técnico ciertos instrumentos irrogables para alcanzar el objetivo que persigue las medidas y sistema establecido un procedimiento de notificación socioeducativa, al que otorga todas las garantías derivadas de nuestra ordenamiento constitucional, en armonía con lo establecido en la absoluta sentencia del Tribunal Constitucional y lo dispuesto en el artículo 40 de la Constitución de los Derechos del Niño de 20 de noviembre de 1989.

Dado que la expresada Ley Orgánica se referencía a el mismo expresamente "el carácter de una reforma urgente, que influye parte de una inminente legislación sobre reforma de menores, que será objeto de medidas legislativas posteriores", es evidente la oportunidad de la presente Ley Orgánica, que constituye una inminente reforma legislativa, particular de los principios básicos que ya guían la redacción de aquella (especialmente, el principio del superior interés del menor), de las garantías de nuestro ordenamiento constitucional, y de las normas de Derechos internacional, con particular atención a la citada Convención de los Derechos del Niño de 20 de noviembre de 1989, y esperando responder de esta modo a las expectativas creadas en la sociedad española, por razones en parte coyunturales y en parte permanentes, sobre este tema concreto.

3. Los principios expresados en la decisión aprobada unánimemente por el Congreso de los Diputados el día 10 de mayo de 1994, sobre medidas para mejorar el marco jurídico vigente de protección del menor, se refieren esencialmente al establecimiento de la responsabilidad penal en los diecisiete años y a la promulgación de "una ley penal del menor y penal que

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