

THE RECENT PROCESS OF REGULATION OF THE UNLAWFUL HOUSING IN THE CANARY ISLANDS (1996-2009)

Carlos Santiago Martín Fernández

Departamento de Geografía. Universidad de La Laguna

The indiscipline has been traditionally one of the major evils of the Spanish urbanism. Land Law (1975) already thought that the reason of this phenomenon was the precariousness and deficiency of the preventive, repressive and correctors instruments put in hands of the Administration by the legislator. However, in the period included between the land's laws of 1956 and 1975, there were also other decisive factors which contributed to generalize the urbanistic indiscipline: the political and economic general context, the weakness of the administrative structures and the scanty preparation of the agents for executing the legal device and, specially, the lack of general planning.

In the Canary Islands, between both laws of the soil, the biggest economic changes has happened: in the sectorial, labor and commercial scopes. The aspect more important from this stage has been the significant reduction of the primary sector in the Gross Domestic Product and employment, and the spectacular growth of these variables in the services sector and construction. A structural change of the Canaries' economy that supposed notable reforms in the economic location, in the residence associated to the migratory processes of the field to city and in the pressure on the land market.

Furthermore, during all this stage, many Canaries municipalities lacked specialized civil servants in urban development matter, because these competences were shared between different administrations or assumed in a direct way by mayor. Especially, the latter situation created a form of personal management applied till now.

Three decades later, with political and legislative changes, the unlawful alteration of urbanism aren't a relic of a past happily passed, because the problem keeps many of the typical reasons of the previous period: relocation of new forms of economic activity, migratory processes and limited supply of housing, with adding of a new key variable which is known like «legitimizing illegality.»

The rate of illegality in Canaries (1990) is very high, 36,38%, or what is the same thing, for every three legal works there are other two illegal ones, emphasizing specially, with 86,5%, the works that have not requested license and that it does not seem that they have

intention of doing it. You work in the main that are autoconstructions (inserted or one-family isolated housings) promoted by an individual for residential own use and that possess the practical totality of the services.

From the landscape point of view, we have to say that the consequence demonstrates of the illegal construction in Canaries it has been the dispersion of buildings, which has outlined an urban development anarchic geography, without order or control, with constructions that not only break the law but, for wide zones of the Archipelago, they characterize an urban dispersed and incomplete landscape.

With respect to Canaries, we distinguish two different forms of urbanistic illegality, according to happens in urban or rural areas.

Urban illegality in areas around large cities Canaries is directly related to the structural change of the insular economy. However, when happens in rural areas has to do with the widespread lack of planning that provides urban soil to the people and the recent valuation of the natural environment like place of residence.

The first new solution for the problem of urban illegality take place in 1996, and it attempted to legalize about 30,000 buildings. A proposal criticized socially and rejected by the Government.

The following year, another formula was proposed, which recognized, without giving exact numbers, the existence of a large number of buildings in conflict with urban planning. With the intention of determining the exact number, a census was realised, in which buildings were built without municipal license had to register.

This way, autonomous Administration (1998) could have, for the first time, trustworthy information of the impact of the illegal buildings and his geographical location (27.269 solicitudes).

Now then, from the Council of Territorial Politics one emphasized that the magnitude of the problem was very much major, since the majority of the requests of legalization it were for buildings near the urban soil. It was calling the attention to the technical personnel the scanty number of inscriptions that were coming from constructions placed in rural accessions or in natural protected spaces, in spite of the fact that it was known that many constructive illegality existed in these sites.

The Government of Canaries it refused the possibility of legalization to 1.474 buildings, 5,4 % of the total, when these did not expire with the requirements established in the Decree. The majority of these misestimated requests were coming from the province of Las Palmas, 942 buildings, whereas the 532 remaining ones concerned to the province of Santa Cruz de Tenerife. For localities, were standing out Las Palmas de Gran Canaria, Telde and San Bartolome de Tirajana, in the province of Las Palmas, and Santa Cruz de Tenerife and La Laguna, in Santa Cruz de Tenerife.

The administrative procedure was continued with the development and delivery of an extensive and detailed cartographic and documentary material to the municipalities, so that they began to study the legalization of illegal buildings. But the municipalities lacked qualified technicians in this work and no city council adapted its planning to the indicated thing in the Decree, which frustrated the process and generated an increase in the number of illegal buildings.

In 2003, another proposal was exposed for regularization of 40,000 illegal houses, which was rejected in Parliament. The proposal was to regularize housing excluding second homes and other cases to cover up real estate speculation. The buildings would be outside of management, and suspend the demolition and disciplinary records. The proposal. The proposal stressed that the responsibility was illegal urban mayors, who, instead of properly warned about the illegality of the buildings in rustic territory and its consequences, had played down the possible future complications.

The offer was consisting of regularizing housings excluding the second residences and other cases that conceal real-estate speculation. The buildings would stay out of arrangement, and the processes of demolition would be suspended and sanctioning.

In the offer was insisted that the responsibility of the urban development illegality belong to the mayors, that, instead of noticing correctly on the illegality of the constructions in rustic territory and of his consequences, they had reduced importance to the possible future complications.

A year later, was made a second attempt to standardize those housings in the parliament of the Canary Islands. In the discussion of the proposition were manifested many of the reasons that explain the serious problem of unlawful building: housing's policy, the ineffectiveness of laws to solve the problem, the delay in the approval of urban planning and the unwillingness of politicians to resolve the subject. This proposition was approved, but with many adjustments.

The last regularizing measures implemented by Canary Government has to do with the buildings that invade the one hundred meters of the public maritime-terrestrial domain, inviolable according to the Coastal Act.

With these characteristics approximately 40 affected settlements exist. The number of infractions is top in the island of La Palma (766) and Tenerife (696), in La Gomera there are eight affected cores (34 occupations) and in El Hierro (1). As for the oriental province, in Lanzarote and Fuerteventura six coastal cores are affected, with a total of 200 housings. In the north zone of Gran Canaria it is where more housings dependent on demolition exist.

When, in 2005, the State Administration announced its intention to enforce the Coastal Act, dictating the imminent demolition of illegal constructions, the regional government asked for flexibility to the State in the application of the rule, but State didn't yield. Then, the Canary Government approved a law that considered like urban the rural settlements located within the area and a census of buildings with ethnographic, architectural and picturesque value, so that their owners could obtain concessions and authorizations for preventing its demolition.

The Law was questioned by Consejo Consultivo of Canaries and appealed by the state Government by invasion of the area competencial of the State. There are suspended the first three articles of the norm and at present, one waits for that the High Court solves the resource interposed by the State against this law.

In conclusion: it's evident that in the Canary Islands the self-building outside the rules has been a evil very difficult to control and eradicate. Accepting that should have a common legal frame for all, it can be assumed also that we must not apply the same solution for different situations.

Among the thousands of unlawful homes exist in the Canary Islands, an indeterminate number incurs delict, but many respond also to the need for a families who, through ignorance or deficiency of economic resources, have built illegally.

This behavior corresponds to the negligent attitude of the Administration. Therefore, when the Canary Government has wanted to regulate housing, to prevent its eventual demolition, to solve a serious social and territorial problem finally, has been an act of justice. However, the adopted measures and the obtained results have not been most satisfactory

After promulgating diverse norms to regularize these houses, the illegal construction continues being a problem, because no norm has finished with the administrative passivity, the social clientages and the interests electoral.