



With the support of regional Guidelines, the Insular Planning Regime (PIO) could limit second residences in non-tourist centres of the island.

Establishing limits to the use of a second residence (in coastal and interior areas) for non-regular island residents would basically be possible, although it would require a well worked-out justification within the constitutional European and Spanish frame. This would be possible taking into account the situation of exhaustion of Lanzarote's total capacity of burden, presuming that the measures be of proportional and indiscriminate character.

Nonetheless the most accessible and feasible limitation is the one offered by legal and urban instruments of regional and insular competence, tooled by the Insular Planning Regime (PIO) and the support of the resolutions contained in the Guidelines of General and Tourist Planning in the Canaries. (It is important to emphasize that the approach of this Report has nothing in common with the debate of a possible introduction of a Residential Law in the Canaries, and is exclusively limited to second residences in non-tourist areas).

Synthesis of the Report:

“Legal Report as to the possibility of limiting access to a second residence in Lanzarote”

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Growth restraint in tourist areas, together with the **predictable increase in the demand of a second residence by non-residents in non-tourist interior and coastal areas of Lanzarote** and other islands, compels to consider precautionary measures in this field **to avoid a new front of human pressure upon insular systems which as is the case in Lanzarote find their capacity of burden practically exhausted and are set upon extremely fragile population kernels of high social and cultural value.**

The experience of the Balearic Islands where this subject acquired a highly disturbing dimension for the future of the archipelago and the information in hands of Lanzarote's Island Government on the growth of building in those areas (30% of the entire building on the island, though at a small scale), indicate that **the moment has arrived to preventively act against this phenomena.**

The Island Government, within the frame of the Project *Life Lanzarote in the Biosphere 2 (2001-2004)*, is studying different types of precautionary measures of distinct complementary formats. One line of work would be the annual limitation of new building capacity, either modulating the quantity of building land (proposal reflected in the Release of Regional Guidelines) or the rhythm of licence grants, (Calvià-Balearic Model).

Another more innovative work line which fulfils the interest of minor potential incidence on land prices would be to **relieve demand for a second residence of non-residents in certain areas of the island.** Note that this option is more selective and complementary than others adopted on the island:

- It permits general housing within the island unit.
- It does not impede the second residence in other areas exempt from mentioned limitation (in tourist areas the limitation is based on offer restraint measures).
- At the same time it permits to graduate and to centre its access in those areas of the island selected upon the base of totally limiting the mentioned types of residence (complete preservation of an area) or only to non-regular residents, (restraint on new exterior human pressure on the island unit), which is the central object in the case of Lanzarote where burden capacity is practically exhausted.

To investigate this new work line the Island Government asked Professor Luis Fajardo Spínola to produce the *Legal Report on the possibility to limit access to a second residence in Lanzarote*, to the object of clarifying three main issues:

- European and national constitutionality of the measures.
- Possible ways of legal implementation.
- Possible complementary tools needed for its application.

1. Constitutionality of the measures.

The European Community Rights (EEC Treaty) and the Spanish Constitution establish **the right for every citizen to freely move and dwell within the territory of the member States.** For this reason, they are reluctant to establish measures that might

limit access to property of a real estate, be it for its exploitation, be it to offer a service or carry out other activities, or be it to reside in it regularly or sporadically.

Nonetheless, and as happens with all, the practice of these rights could **exceptionally** be subject to **established limits and conditions** in specific places and circumstances, according to public interest and under a series of **conditions**:

- That no discrimination for reasons of origin and nationality are established.
- That the principle of proportion of the restrictive measures is established.

This exceptional nature is specially justifiable on island territories which have always been specially considered in the European legal planning due to their singularity.

Therefore e.g. the **article 37.1 of the Canarian Autonomy Statutes** whose constitutionality can not be argued, already provides the possibility of developing specific residence mechanism on a fragile and fragmented territory in which population burden brings about fundamental connotation.

Therefore **starting with the situation of exhaustion of the capacity of total burden on the island of Lanzarote and surmising the proportional non-discriminatory character of the measures, it must be understood that from the European and Spanish constitutional point of view, to establish limits on the use of the second residence by non-island residents could basically be possible though it would require a well worked out justification.**

The precedent in the Land of Tirol, in Austria

The *Tiroler Grundverkehrsgesetz* was proclaimed for reasons of **tourist overflow and the corresponding environmental and social-cultural damage to the area**. This legal measure for the Tirol **submits to previous authorisation the purchase or building of real estate as objects of a second residence**.

This subject having been brought before the European Court of Justice (sentence 1st June 1999) and according to the argument by the Austrian Government that said limitations constitute the only measure to preserve control over territory planning politics, **in territories of small dimensions, with scant building soil and finding themselves under tourist pressure**, the mentioned Court established that **these limitations could be acceptable if the following conditions were given**:

“That the member State can justify its demand of previous authorisation by invoking a territory planning objective maintaining in the general interest a permanent population and an autonomous economic activity referring to the tourist sector in certain regions, and also that the restrictive measures be applied in a non-discriminatory fashion and when other less coercive procedures will not allow the same result”.

The progressive implantation of the concept of burden capacity in European development strategies that is being directly promoted by the European Union, is giving birth to new ways of sustainable management of territorial systems, and very

specifically, of insular territories where concepts such as limit, roof and conditions will extend throughout the entire European territory in the next years.

2. Possible ways of legal instrumentation: advantages of regional and insular urban tools.

After having explained the constitutional field, different channels are explored to legally score the measures. After analysing different options, from those that would require the approval of a state law “ad hoc” to those based on tax measures and stimulus, the Report proposes as the **most accessible and feasible the one offered by legal-urban tools of regional-insular competence, with the instrumentation gained by the Insular Planning Regime.**

In synthesis the means of urban regional and insular rights are relatively simple. They would consist in that their basic support (Guidelines and tools for the development of the Planning Law for the Canarian Territory – Rules of Planning, Technical Normative... – and Insular Planning Regime) would consider a categorization of residential use which would again consider the main residence and the second residence and within this last one, the one used by regular and irregular residents. Starting with these reflexions **the Insular Planning Regime has sufficient power to delimit population kernels subject to precautionary measures and to distribute and determine priorities of structuring use and activities of the territory, including those residential and their derivates.**

3. Complementary tools for the application of the measures.

Practical instrumentation and the control of measures for limiting the use of second residences in certain population areas could be more complex and in any event would require a high social and institutional consensus, specially from the municipality. It is a question of measures oriented to establishing limits in the use of real estate independently on who it is owned by.

Not wanting to prospect all existing possibilities for the management of the measures analysed in this Report, a series of control possibilities of their application are considered, in origin as well as in permanent form, by ways of precise notes in building licences of first occupation and registry and by means of the certificate of habitability as the required document for water and electricity connection and other communal services.