

Aspects concerning the immovable accession from the perspective of the new Civil Code

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Abstract

The new Civil Code introduces several important changes and clarifications regarding the ownership right in general, including in the matter of the ways of acquiring private ownership. Among the ways of acquiring the private ownership right, the accession gets in the new Civil Code a legal regulation which is much more precise and better systematized, especially in relation to the artificial immovable accession, the legislator thus responding to practical needs, as they have been raised in the jurisprudence, but also to controversial issues outlined in the juridical doctrine.

This paper aims to conduct a comparative analysis, which is necessary to both the analyst in law and the practitioner, between the old regulation contained in the Civil Code of 1864 and the current regulation provided by the new Civil Code in the field of immovable accession, with special attention to artificial immovable accession, due to its practical incidence.

Keywords: private ownership right, ways of acquiring, accession, immovable accession, artificial immovable accession.

JEL Classification: K11

1. Preliminary considerations

The new Civil Code² introduces several important changes and clarifications regarding the ownership right in general, including in the matter of the ways of acquiring private ownership.

Thus, under the prior regulation, the legal enumeration of the general ways of acquiring private property right contained in art. 644 and 645 of the 1864 Civil Code³ had been considered in the juridical literature primarily incomplete, because it did not refer to the constitutive or translative of rights judgments or to the way of acquiring movable goods and fruits by possession in good faith. Equally, this list has been criticized as confusing, because it mentioned the succession, without any explanation, and distinctly legacies (in fact testamentary succession) as ways of acquiring private ownership right⁴.

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² Law no. 287/2009, republished in the Official Journal of Romania, Part I, no. 505/15.07.2011.

³ Art. 644 and 645 of the 1864 Civil Code had provided the following ways of acquiring ownership right: succession, legacies, convention, handing over, accession or incorporation, prescription, law and occupation.

⁴ See, in relation to all these critics, L. Pop, *Dreptul de proprietate și dezmembrămintele sale*, Lumina Lex Publishing House, Bucharest, 2001, p. 209-210 and the authors mentioned therein; P. Vlahide, *Repetiția principiilor de drept civil*, vol. I, Europa Nova Publishing House, Bucharest, 1994, p. 112.

Therefore, within the current regulation, according to article 557 paragraphs 1 and 2 of the new Civil Code, the ownership right may be acquired, under the conditions provided by law, by convention, legal or testamentary succession, accession, acquisitive prescription, possession in good faith of movable goods and fruits, occupation, handing over, translative of property judgment, administrative act. This legal enumeration is not limitative, since art. 557 paragraph 3 of the new Civil Code expressly states that the law may also regulate other ways of acquiring the ownership right.

Among the ways of acquiring the private ownership right, the accession gets in the new Civil Code a legal regulation which is much more precise and better systematized, especially in relation to the artificial immovable accession, the legislator thus responding to practical needs, as they have been raised in the jurisprudence⁵, but also to controversial issues outlined in the juridical doctrine⁶.

Concerning the legal definition of accession currently contained in art. 567 of the new Civil Code⁷, it was slightly reformulated in relation to the one provided by the 1864 Civil Code⁸, but the legislator did not seize the opportunity to expressly mention, on this occasion, an essential condition in order for the accession to operate, which logically derives from the entire regulation of this legal institution, namely that the goods that are added together must belong to different owners.

Further, article 568 Civil Code expressly introduces the distinction between the two forms of accession, natural and artificial, which had been unanimously proposed in the juridical literature, even in the absence of a legal text in this respect within the 1864 Civil Code.

However, we consider it is objectionable the omission of the current legislator, which provides in a general manner the forms in which the accession may operate, and does not specify the important mention that they relate only to the immovable accession. This circumstance undoubtedly results from their further regulation, namely Natural immovable accession in Section 2, Artificial immovable accession in Section 3, and distinctly Movable accession (without any other details) in Section 4 of Chapter II – Accession from Title II of the new Civil Code. Thus, despite the evidence, the legislator chooses to include article 568 of

⁵ In this regard, the former Supreme Tribunal had pronounced the Guidance Decision no. 13/1959, published in the Reports of guidance decisions of the Plenum of the Supreme Tribunal in civil matters, Scientific Publishing House, Bucharest, 1966, p. 91-94, by which there were outlined a set of guidelines regarding the way to apply in practice the provisions of article 494 of the 1864 Civil Code, particularly concerning the treatment of the constructor in bad faith on the land of another.

⁶ Thus, for example, the controversy concerning the moment when the ownership right of the owner of the land over the building constructed by another person is born, or the legal nature of the right of the constructor on the land of another until the accession is invoked – see in this regard, widely, L. Pop, *op. cit.*, p. 222-226.

⁷ According to article 567 of the new Civil Code, "By accession, the owner of a thing becomes the owner of everything that is added to the thing or is incorporated into it, unless the law provides otherwise".

⁸ Under the 1864 Civil Code of 1864, the accession was defined by art. 488 Civil Code as follows: "Everything that is joined and incorporated into the thing must belong to its owner".

the new Civil Code, which regulates the forms of accession, in Section 1, that contains general provisions on the legal institution of accession, which might induce the inaccurate idea that this legal text would refer to accession in general and not only to the immovable accession.

This paper aims to conduct further a comparative analysis, which is necessary to both the analyst in law and the practitioner, between the prior regulation contained in the Civil Code of 1864 and the current regulation provided by the new Civil Code in the field of immovable accession, with special attention to artificial immovable accession, due to its practical incidence.

2. Natural immovable accession

The cases of natural immovable accession are regulated by articles 569-576 of the new Civil Code. Most of these were taken from the old regulation⁹, with some amendments or additional details which the legislator has undoubtedly considered for practical or legislative reasons, taking into account the opinions expressed in the juridical literature under the 1864 Civil Code. Therefore there are to be found in the new Civil Code the following cases of natural immovable accession:

a. the alluviums, namely soil deposits formed at banks of flowing waters – art. 569 of the Civil Code, which belong to the owner of the riparian land, taking into account that the current regulation states expressly the condition that such additions are to be made gradually.

In addition, we must also include in the category of alluviums the lands which were left by flowing waters that gradually withdrawn from the shore – art. 570 of the Civil Code, but the alluviums are not applicable to standing waters – article 571 Civil Code.

b. avulsion, respectively the sudden removal of a piece of land, by the action of flowing waters, which is then joined to another riverside property – article 572 Civil Code.

Thus, the owner of the land to which the piece of land had been added will acquire, through accession, the ownership right over it, to the extent that the former owner has not claimed it within the term of extinctive prescription of one year after separation.

c. islands and gravels – article 573 paragraphs 2 and 3, and article 574 Civil Code.

It must however be noted that compared to the previous regulation, the case of natural immovable accession concerning islands and gravels has been changed¹⁰, actually introducing in the new Civil Code certain provisions of the Law

⁹ The 1864 Civil Code had regulated the alluvium in articles 495-497 Civil Code, the avulsion in article 498 Civil Code, islands and gravels in article 500 Civil Code, the accession of the bed of a river in article 502 Civil Code and the accession of wild animals in article 503 Civil Code.

¹⁰ Under the previous regulation, according to article 500 Civil Code, islands and gravels formed on non-navigable and non-floating rivers were the object of the ownership right of riparian owners, depending on their position to the center line of the watercourse. Instead, according to article 499 of the Civil Code, islands and gravels formed on the bed of navigable rivers belonged to the state.

on waters no. 107/1996¹¹, as amended and completed. Thus, the new Civil Code expressly provides that islands and gravels that are not related to the lands having the bank at the average water level belong to the owner of the river bed¹². *Per a contrario*, other islands and gravels belong to riparian owners, in a proportion determined by their position to the center line of the watercourse. However, in the case of formation of new islands due to the fact that a river had surrounded, by a new arm, the land of a riparian owner, article 574 Civil Code expressly states that it will belong to the original owner.

d. the accession over animals – article 576 Civil Code.

Under the 1864 Civil Code, this case of natural accession had concerned only wild animals and birds, although the juridical doctrine and the jurisprudence had mentioned that it actually referred to semi-wild animals, such as doves, rabbits, bees¹³. Moreover, even under the previous regulation, concerning wild animals, there were applicable the provisions of the special law, namely the Law no. 407/2006 on hunting and the protection of hunting, as amended¹⁴.

Therefore, the new regulation restricts expressly, in article 576 paragraph 2 Civil Code, the acquisition of property through accession by the owner of the land only to doves, rabbits, fish and other such animals.

Equally, in relation to the previous regulation, article 576 new Civil Code has introduced a new case of natural accession on domestic animals and swarm of bees. Thus, wandering domestic animals on the land of another person belong, through accession, to the land owner if their owner does not claim them within 30 days from the date of declaration made by the land owner within the city hall (article 576 paragraph 1 Civil Code). Also, the swarm of bees which had passed on the land of another person belongs, through accession, to the land owner if their owner does not pursue them at all or stops tracking them for 2 days (article 576 paragraph 3 of the Civil Code).

In addition to the cases of natural immovable accession mentioned above, which were taken with some modifications from the previous regulation, the new Civil Code introduces a new hypothesis for the acquisition of the ownership right through this way, expressly providing that riverbeds belong to riparian owners, unless the cases in which, according to the law, are the object of public property (article 573 paragraph 1 of the Civil Code). Moreover, a similar provision is also contained in article 3 paragraph 2 of the Law on waters no. 107/1996, except that the latter normative act expressly states that are the object of public property minor surface water beds with lengths greater than 5 km and water basins exceeding 10 km² (article 3 paragraph 1 of Law no. 107/1996, as amended and completed).

¹¹ Published in the Official Journal of Romania, Part I, no. 244/08.10.1996

¹² The same provision is also included in article 3 paragraph 3 of the Law on waters no. 107/1996, as amended and completed.

¹³ See, in this respect, for example I. Filipescu, A. Filipescu, *Drept civil. Dreptul de proprietate și alte drepturi reale*, ACTAMI Publishing House, Bucharest, 2000, p. 274, E. Safta-Romano, *Dreptul de proprietate privată și publică în România*, Graphix Publishing House, Iași, 1993, p. 319.

¹⁴ Published in the Official Journal of Romania, Part I, no. 944/22.11.2006

Instead, the new Civil Code has not taken from the previous regulation the case of accession of abandoned water bed of a river that changed its course naturally¹⁵. On the contrary, article 575 of the new Civil Code provides that the legal regime of the abandoned water bed will be established by special law. In this connection, it should be mentioned that article 99 of the Land Law no. 18/1991, republished¹⁶, amended and completed, provides that the lands within abandoned river beds due to the regularization works will be prepared by their owners for agricultural production, fisheries and, where appropriate, forest production.

3. Artificial immovable accession

Concerning the artificial immovable accession, which involves human intervention, the new Civil Code contains, in article 577 paragraph 2, a provision of principle according to which buildings, plantations and other works made on an immovable thing belong to the owner of that property, unless otherwise provided by law or juridical act.

Subsequently, however, unlike the 1864 Civil Code¹⁷, the current legislator has sought to regulate in a more detailed manner the artificial immovable accession. Also, it is expressly established the possibility, already recognized by jurisprudence, that the accession operates not only in the benefit of land, considered to be the principal thing, but also in the benefit of any other immovable thing on which the works were carried out. This idea derives from the constant use of the term "immovable thing" instead of "land" and from the spirit of the entire regulation in this matter.

In this respect, the new Civil Code introduces a classification of works that can be carried out on an immovable thing, in autonomous works, namely constructions, plantations and other works having independent character, and added works that are not independent (article 578 paragraphs 1, 2 and 3 Civil Code). In turn, the added works are classified into: necessary works when preventing destruction or damage to property, useful works when increasing the economic value of the property, and voluptuary works, when made for mere pleasure, without increasing property value. This classification is important due to the different legal regime provided for each category of works.

In the same time, in article 579 of the Civil Code, the present legislator has resumed from the previous regulation, approximately in the same terms¹⁸, the presumption of ownership of the work in the benefit of the owner of the immovable thing, until it is proved otherwise, but it was explicitly restrained to some cases, namely when a superficies right was constituted, when the owner did not register

¹⁵ In this respect, article 502 of the 1864 Civil Code had provided that the water bed abandoned by flowing water is shared between neighboring owners.

¹⁶ Republished in the Official Journal of Romania, Part I, no. 1/05.01.1998

¹⁷ The 1864 Civil Code had regulated the artificial immovable accession in only three articles, namely articles 492-494.

¹⁸ In accordance with article 492 of the 1864 Civil Code, "any construction, plantation or thing carried out into the earth or on the earth shall be deemed to be made by the owner of the land with its expense and that belong to him, until proving otherwise".

the ownership over the new work in the Real Estate Register, and in other cases provided by law.

Regarding the cases of artificial immovable accession, the new Civil Code also makes the traditional distinction between the hypothesis of the works carried out by the owner of the immovable thing, with materials belonging to him or to another person, and that of the works carried out by another person, with his materials, on the immovable thing belonging to somebody else.

A. The accession of the works carried out by the owner of the immovable thing, with materials belonging to him or to another person¹⁹

In such a case, according to articles 577 paragraph 2 and 580 of the Civil Code, the owner of the immovable thing becomes, through accession, the owner of the work. However, if the work was carried out with the materials belonging to another person, the latter is entitled to receive the value of the incorporated materials and compensation for any damage caused. In addition, ending thus the controversy arisen in the juridical literature and jurisprudence under the old regulation²⁰, the new Civil Code expressly provides that the owner of an immovable thing becomes, through accession, the owner of the works made by him on it, from the moment of beginning the works, to the extent of their execution (art. 577 Civil Code).

B. The accession of the works carried out by another person, with his materials, on the immovable thing belonging to somebody else

In such a situation, there are differences of legal regime according to the constructor's good or bad faith, as in the previous regulations, but also according to the category in which the performed work belongs.

Concerning the good faith of the constructor, under the 1864 Civil Code, this concept was outlined in the juridical doctrine and the jurisprudence, in the absence of an express legal provision in this field. The present legislator opts for a legal definition of good faith of the constructor, contained in article 586 Civil Code, which essentially refers to the same concept, namely the incorrect belief of the constructor that he is the owner of the immovable thing on which he is building. However, considering probably the situations that have been and can be encountered in practice, the new Civil Code expressly provides that no one may plead good faith if he builds without statutory authorization or in violation thereof (article 586 paragraph 2 of the new Civil Code). In addition, article 597 of the new Civil Code explicitly mentions that the precarious holder will be subjected to the

¹⁹ The 1864 Civil Code had regulated in the same way this case of artificial immovable accession in article 493, except that the specified legal text did not refer expressly to the hypothesis of the owner carrying out works on the immovable thing with his own materials. However, in practice in such a case the owner of the immovable thing acquired through accession the ownership right of the work performed.

²⁰ See, in this respect, widely, L. Pop, *op. cit.*, p. 222-226, and the authors cited therein.

treatment of the constructor in bad faith, if performing works on the property that he holds.

Regarding the treatment of the constructor on the immovable thing belonging to another person, it should be mentioned that, according to article 590 paragraph 1 Civil Code, he has the right, in all cases and regardless of his good or bad faith, to take the materials, until the date the owner of the immovable thing intends to act. The constructor in bad faith may be required, even in this case, to pay damages.

Taking into account the classification of works introduced by article 578 of the new Civil Code, we should firstly distinguish between autonomous works and added works.

a. The accession of autonomous works

As under the previous regulation, the solutions provided by the new Civil Code are different, according to the good or bad faith of the constructor.

Therefore, in case of the constructor in good faith, the owner of the immovable thing, invoking the accession, is obliged to compensate the constructor, at his option, either with the value of materials and labor, or with the increase of value of the property as a result of the work (article 581 letter a Civil Code).

In addition to this possibility, taken at approximately the same terms from article 494 paragraph 3 of the 1864 Civil Code, the new Civil Code also introduces the option of the owner of immovable thing to ask the court of law to oblige the constructor to buy the property at the actual value that it would have had if the constructor had not carried out the work (article 581 letter b Civil Code). In this case, if the parties can not reach an agreement, at the request of the owner of immovable thing, the court will determine the price and will pronounce a judgment in order to replace the sale-purchase contract, recognizing to the original owner of the immovable thing a right of legal mortgage on it for the payment of the price (article 592 paragraphs 1 and 2 Civil Code).

Concerning the constructor in bad faith, the new Civil Code also takes the options contained in the old regulation, but with some amendments. Thus, firstly, according to article 582 paragraph 1 letters a and b Civil Code, the owner of the immovable thing may, at its discretion, require the constructor in bad faith to demolish the work or invoke the accession, becoming thus the owner of the work, together with his obligation to indemnify the builder with an amount equal to half of either the value of materials and labor, or the increase of value of the property as a result of the work²¹. It should be noted that, in case of the demolition of the work, the current legislator expressly provides that it can be done only in accordance with

²¹ The same possibilities were provided, in case of the builder in bad faith, by article 494 paragraphs 1, 2 and 3, the first part, of the 1864 Civil Code, except that in the event he sought to invoke the accession, the owner was required to pay the builder the value of materials and labor necessary in order to perform the work.

the legal provisions in the matter²², thus giving legal recognition to one of the guidelines promoted by the former Supreme Tribunal since the early 1960s, through a guidance decision²³, and which had also been adopted by the juridical literature²⁴.

The present legislator also adds to the presented possibilities the option of the owner of the immovable thing to request the court of law to oblige the constructor to buy the property at the actual value that it would have had if the constructor had not carried out the work (art. 582 letter c Civil Code), under the same conditions as for the builder in good faith.

b. The accession of added works having permanent character

Regarding this category of works that have not an independent character, the new Civil Code further distinguishes between necessary works, useful works and voluptuary works, according to the provisions of art. 578 paragraph 3 Civil Code.

With reference to the necessary added works (works which are not independent, but in their absence the immovable thing would perish or it would deteriorate - art. 578 paragraph 3 letter a Civil Code) carried out on the property of another person, the owner of the immovable thing becomes the owner of the works, from the moment of their execution, with the obligation to pay to the constructor the reasonable expenses, even if the immovable thing was destroyed (art. 583 paragraph 1 Civil Code). If the constructor has acted in bad faith, the amount due by the owner of the property may be reduced with the value of the fruits produced by the immovable thing, less the costs of obtaining them (article 583 paragraph 2 Civil Code).

In case of useful added works (works which are not independent, but they increase the economic value of the property – art. 578 paragraph 3 letter b Civil Code) carried out on the property of another person, according to article 584 of the

²² Thus, the court can not order the demolition of a building, in the event that for such an action is necessary to obtain the demolition authorization, under the provisions of Law no. 50/1991 on the authorization of construction works, republished, as amended, if such authorization does not exist, in the sense that it has not been obtained in advance. In this respect, according to article 8, paragraph 1 of Law no. 50/1991, republished "The demolition, decommissioning or dismantling, partial or total, of constructions and related facilities, installations and technological equipment, including construction elements to support them, closing the pit and underground mining and any other arrangements are made only on the basis of the demolition authorization obtained in advance from the authorities referred to in art. 4" and under paragraph 2 of the same legal provision "the demolition authorization is issued under the same conditions as the building authorization, according to urban plans and related regulations, under the law, except as provided in article 11". In addition, art. 11 of Law no. 50/1991 states the works for which no building or demolition authorization is required, namely works that do not modify the structure or the architectural appearance of the building.

²³ The Guidance Decision no. 13/1959, published in the Reports of guidance decisions of the Plenum of the Supreme Tribunal in civil matters, Scientific Publishing House, Bucharest, 1966, p. 91-94.

²⁴ For example, C. Bârsan, *Drept civil. Drepturile reale principale*, 2nd edition, revised and completed, Hamangiu Publishing House, Bucharest, 2007, p. 311 and the authors cited therein; L. Pop, *op. cit.*, p. 220.

Civil Code, the options of the owner of the immovable thing are different, taking into account the good or bad faith of the constructor.

If the constructor has acted in good faith, the owner of the immovable thing becomes, by accession, the owner of the works, from the moment of their execution, with the obligation to pay to the constructor, at his choice, either the value of materials and labor, or the increase of value of the property as a result of the work.

If the constructor has acted in bad faith, the owner of the immovable thing has two options, namely:

- to invoke the accession and become the owner of the work, being obliged to pay the constructor, at his choice, half of the value of materials and labor or of the increase of value of the property as a result of the work;

- to request the constructor to demolish the work, to bring the immovable thing into the previous state and to pay damages.

In both cases, regardless of the good or bad faith of the constructor, if the value of the work is considerable, another option is also opened for the owner of the immovable thing, namely to ask the court of law to oblige the constructor to buy the property at the actual value that it would have had if the constructor had not carried out the work (art. 584 paragraph 3 Civil Code).

Regarding the case of voluptuary added works (works which are not independent, but are performed for the simple pleasure of their constructor, without increasing the economic value of the property - art. 578 paragraph 3 letter c Civil Code) carried out on the property of another person, according to article 585 of the new Civil Code, the options of the owner of the immovable thing are also different, taking into account the good or bad faith of the constructor.

If the constructor has acted in good faith, the owner of the immovable thing becomes, by accession, the owner of the works, without being obliged to compensate the author. However, the constructor in good faith is entitled to take the work before restituting the immovable thing to its owner, provided that the property is restored to the previous state (article 585 paragraph 3 Civil Code).

If the constructor has acted in bad faith, the owner of the immovable thing has two options, namely:

- to invoke the accession and become the owner of the work, without being obliged to compensate the author;

- to request the constructor to demolish the work, to bring the immovable thing into the previous state and to pay damages.

In addition to the presented cases of artificial immovable accession, it should be noted that at the end of the section dedicated to this way of acquiring the ownership right, the present legislator has inserted certain legal provisions aiming to bring clarifications and supplementary details, taking also into account the need to end the controversies arisen within juridical literature and jurisprudence under the previous regulation.

Thus, article 587 Civil Code regulates the case of the works having permanent character which are made partially on the constructor's property and partly on the land belonging to neighboring owner.

In this case, one should also make the distinction between the constructor in good faith and the constructor in bad faith.

Therefore, if the constructor has acted in good faith, the neighboring owner will invoke the accession and will ask the court of law to register, under a new entry into the real estate register, a common ownership right over the resulting immovable thing and the corresponding land, according to the respective contributions of each one.

If the constructor has acted in bad faith, the neighboring owner has two options, namely:

- to invoke the accession and to ask the court of law to register, under a new entry into the real estate register, a common ownership right over the resulting immovable thing and the corresponding land, but in order to determine the respective contributions of each one, the court will take into account only half of the value of contribution brought by the constructor in bad faith;

- to request the constructor to demolish the work performed on his land, to bring the immovable thing into the previous state and to pay damages.

In addition, article 588 of the new Civil Code regulates the case of temporary works performed on the property of another person. In such a situation, the constructor on the immovable thing belonging to somebody else will always be obliged to demolish the temporary works without any distinction as concerning his good or bad faith. However, if he has acted in bad faith, he is also obliged to pay compensation for the damage caused, which includes the lack of use.

In order to solve another problem arisen within jurisprudence under the old regulation, article 591 paragraph 1 of the new Civil Code provides that the extinctive prescription of the action of the constructor against the owner of the immovable thing, for payment of the due compensation is not running as long as he is allowed to hold the property by the owner. As such, the extinctive prescription begins to run when the owner of the immovable thing invokes the accession. In addition, the law recognizes to the constructor in good faith a right of legal mortgage over the property until the payment, by the owner, of the amounts due to him (article 591 paragraph 2 Civil Code)²⁵.

Equally, through article 595 of the new Civil Code the current legislator has ended another existing controversy within the juridical literature and jurisprudence, concerning the establishment of the extent of compensation due to the constructor, by reference either to the value at the time of executing the works²⁶, or to the one from the date of pronouncing the judgment²⁷. Therefore,

²⁵ Under the Civil Code of 1864, in the juridical doctrine and jurisprudence had emerged the view that it should be recognized to the constructor, regardless of his good or bad faith, a right of retention on the executed work, until the payment of compensation by the owner of the immovable thing - see, in this respect, L. Pop, *op. cit.*, p. 226.

²⁶ See, in this respect, for instance I. Filipescu, A. Filipescu, *op. cit.*, p. 280.

under the new regulation contained in article 595 of the Civil Code, in all cases of artificial immovable accession, the court shall determine the amounts owed to the constructor or the damages by reference to the actual value of goods from the date of pronouncing the judgment.

The new Civil Code also introduces other special cases of accession, in the terminology of the law, namely situations in which will be applicable equally, the legal provisions governing the artificial immovable accession.

Thus, article 596 paragraph 1 of the Civil Code expressly stipulates that all cases of artificial immovable accession must be applied accordingly to the holder of a right of superficies or of another real right which would allow him to acquire the ownership of the work, the latter having the rights and obligations regulated by the law in relation to the owner of the immovable thing.

However, according to article 596 paragraph 2 of the Civil Code, if the permanent autonomous works are carried out by the holder of a real right over the immovable thing that does not allow him to acquire the ownership of the work, he will be subjected to the provisions of the law that regulate the builder in bad faith. If the works performed by him have the character of added works, the appropriate provisions of law in the matter of usufruct will apply (article 716 Civil Code). Thus, the constructor holder of a real right over the immovable thing may request from the owner an equitable compensation for the necessary added works, in all cases, and for the other categories of added works (useful and voluptuary) only if they have increased the value of the property. Nevertheless, if the works were carried out without the approval of the owner of the immovable thing, the latter may request their removal and bringing the property to its previous state.

At the end of these considerations, we believe that certain details on the application in time of the analyzed legal texts are necessary. Thus, article 6 paragraph 2 of the new Civil Code states as a principle the idea that the juridical acts and facts concluded, produced or committed before the entry into force of the new law can only have the legal effect provided by the old law, namely the law in force at the date of their conclusion, production or commission.

Equally, the Law no. 71/2011 for the application of Law no. 287/2009 on the Civil Code²⁸ contains two legal provisions applicable to the immovable accession. Thus, in relation to the natural accession of animals, article 57 of the Law no. 71/2011 states that the legal provisions concerning this way of acquiring the ownership right apply to the legal situations arisen after the entry into force of the new Civil Code. In addition, in the field of artificial immovable accession, article 58 of the Law no. 71/2011 expressly provides that the effects of the accession are governed by the law in force at the moment of beginning the execution of the works.

In conclusion, the immovable accession is governed by the law in force at the time of production or commission of the fact that determines the application of this way of acquiring private ownership right.

²⁷ For example, L. Pop, *op. cit.*, p. 225.

²⁸ Published in the Official Journal of Romania, Part I, no. 409/10.06.2011

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