

CMS secures landmark ruling for electricity and gas producers in Romania



International law firm CMS has won an important victory for electricity and gas producers in a landmark case concerning an access road built without the affected landowner's consent. The ruling states that electricity and gas producing companies are not obliged to pay damages based on tort law.

The CMS litigation team successfully represented an electricity producer in the dispute. The dispute concerned the electricity producer's tort liability for (mistakenly) building part of a driveway on privately owned land without the consent of the affected landowner.

While the landowner argued that the electricity company had committed an unlawful act that deprived him of the use of the affected area of land, CMS lawyers argued that the holding of an electricity production licence triggered the applicability of Law No. 123/2012 on Electricity and Natural Gas, which establishes a set of rights and obligations for both the holder of the electricity production licence and the owner of the affected land. The licensee has a legal right of easement for maintenance and access to the energy facilities, which is a legal encumbrance of the property right in the general interest of the community to obtain electricity.

CMS's interpretation was confirmed at the first instance by the Constanța District Court, which concluded that the energy producer's use of the affected area of the plaintiff's land did not constitute an unlawful act, but was justified by the provisions of Law No. 123/2012, which establishes a legal easement in its favour. The judgment states that the owner of land affected by an access path, built without consent, is not entitled to compensation for the lack of use under the general law, when the access path provides access to an energy facility.

The Constanța Court's decision is also relevant to the natural gas sector, given the legal easement of access from which natural gas companies also benefit.

Horia Draghici, *partner and Head of the Dispute Resolution Department at CMS Romania*, said, "This judgment is important because it resolves situations often encountered in practice where, during the construction phase of energy projects, adjustments are necessary or changes to the initial plans occur. As a rule, landowners request higher compensation after the start of the construction phase, and this court solution should facilitate the negotiation process in favour of energy project owners."

Partner **Horia Draghici**, counsel **Andrei Cristescu**, and associate **Diana Valeria Ceașu** were part of the CMS team who obtained the judgment.