Regarding the ACCC Member's question over the pending Administrative Court of Appeals decision:

The communicants expect that the Administrative Appeals Court decision on the merits of their case will be rendered sometime next year. Nevertheless, the communicants are certain that their appeal will be rejected for the following reason. The Administrative Appeal Courts has already ruled on an appeal brought by different members of the public but regarding the same set of facts – namely the construction of the recreational facility-). According to that decision, members of the public have no legal standing to challenge the decision to build the recreational facility, as well as that since the Children's Playground is not *explicitly* mentioned in Annex II to the Aarhus Convention (as well as Annex II to the domestic law transposing the Convention in the domestic legal order), there was no requirement to carry out an environmental impact assessment; the decision also made no reference to the fact that under domestic law environmental impact assessment are always necessary in cases where the project in question concerns an area of national importance. The impression therefore given is that unless a facility is *expressly* classified as a thematic park, the domestic courts will not consider such a facility as falling within the scope of the term "thematic park" and will consequently not attract the application of the Aarhus Convention.

It is recalled that this was the precise reasoning adopted by the domestic court in rejecting both their request for interim measures as well as their action on the merits. The communicants therefore believe that in light of the settled domestic jurisprudence, their appeal stands no chance of success. To that end, the communicants respectfully call upon the Committee to request from the Albanian Government to provide it with at least **one example of a final decision** rendered by domestic courts in which members of the public were granted standing to challenge administrative decisions on the basis of the Aarhus Convention as well as a case in which the domestic courts ruled for adequate redress (e.g. the demolition of a building) in redress for a violation of the Aarhus Convention.

In the light of the above, the only remedy available in theory to the communicants against the Appeals Court decision is the filing of an appeal on points of law with the High Court. The effectiveness of this remedy however is undermined by the following two factors:

First, under domestic law, appeals on points of law can be filed only on three grounds, namely in cases of conflicting jurisprudence by lower courts, when the decision of the appeals court is in breach of a unifying decision by the High Court or in cases of serious procedural violation that has as a result the annulment of the proceeding in question. None of these grounds obtain in the present case; thus the Administrative Appeals Court decision is fully in line with the (restrictive) line of jurisprudence adopted by domestic courts, it (the decision) does not sit at odds with any unifying decision of the High Court and finally the proceedings have not been vitiated by any procedural error that would render them absolutely invalid.[1]

Second, according to the recently released 2018 Annual Report of the Albanian High Judicial Council, it would take more than 17 years for the High Court, when **fully constituted** [emphasis added], to clear its existing backlog of cases - indeed, in light of the accumulation of additional cases on the High Court's docket since the adoption of the report and the continuing non-functioning of the Court, it is

[1] See **Annex 1** to the present submission, relevant domestic legal provision, in English and Albanian.

certain that this estimate should be revised upwards.[2] Considering that their case does not present any urgency (the playground has already been built), it is unlikely that their case will be treated with priority. To that end, the communicants note that the European Court of Human Rights has already communicated two cases (one regarding criminal and one regarding administrative proceedings) raising similar issues of protracted proceedings before the High Court;[3] the fact that the European Court decided to communicate these two cases (that are still pending before the High Court constitutes, in the communicants' opinion, a strong piece of evidence that the European Court considers that the very delay encountered in these proceedings undermines the applicants' right to a fair trial.

In the light of the above, the complainants contend that an appeal on points of law against the Administrative Appeals Court decision before the High Court would not constitute an effective remedy (be it in the context of their request for interim proceedings or for their substantive request) since first, in light of the existing line of jurisprudence by domestic courts, the successive domestic courts seized of their case were right in denying them legal standing. Second, in light of the fact that proceedings before the High Court will be highly protracted (and with minimal chances of success as noted above, thus possibly necessitating a further round of proceedings before the Constitutional Court), the communicants should be absolved from the obligation of waiting for the decision of the Administrative Appeals Court to be rendered and to pursue any additional judicial remedy after securing the Appeals Court decision. The communicants therefore call upon the Committee to find their communication admissible.

[2] See **Annex 2** to the present submission; the relevant paragraph from the is reproduced in Albanian and translated into English.

[3] **Annexes 3** and **4**, Keta v. Albania and Bara v. Albania