Protest and participation in post-transformation Poland: The case of the Committee for the Defense of Democracy (KOD)

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ABSTRACT
The paper explores the recent political participation in Poland focusing on the KOD movement. Given that very limited data is available on the impact of citizen participation in political process in Poland, the paper attempts a preliminary assessment of the participation "between elections". The paper tries to take a snapshot of the KOD movement and to examine it in the context of civil society concept. The paper argues that the KOD movement is located between civil and political society on the one hand. On the other hand, it draws strongly on the symbolism of the civil resistance during the last two decades of communism. The dichotomy of post-communism and the former anti-communist opposition (including former Solidarity and KOR activists) was relevant for the political participation in Poland in the 1990s and 2000s and, as I argue now, has been replaced by new identity conflict between the symbolic politics of nationhood and the liberal Europeanized vision of politics.

1. Introduction
Since 1989, Central and Eastern European (CEE) countries (Czech Republic, Hungary, Poland and Slovakia) have experienced more than a decade of a relatively successful and unprecedented transformation to democracy and capitalism (Holman, 1998; Pridham, 2005; Ekiert et al., 2007). Their democracies had been long regarded as consolidated and their capitalist governance seemed to be even more stable than in the Southern European crisis-ridden countries, like Greece, Cyprus or Spain, in particular since the sovereign debt and banking crisis in the EU in 2011. The NATO and the EU membership of CEE (1999 and 2004) has been viewed an additional democratically stabilizing factor (Pridham, 2006; Schimmelfennig, 2007). All CEE countries went through a series of democratic elections and were considered consolidated democracies by the end of the 1990s (Diamond, 1997; Sanford, 2002). However, some scholars point to a recent "democratic fatigue" in these countries (Rupnik and Zielonka, 2013; Ekiert and Ziblatt, 2013; Dawson and Hanley, 2016) or even de-democratization (Agh, 2015).

What has recently become an issue, in particular regarding Hungary and Poland, is the quality of "democracy between elections" (Shapiro, 2015) and the political participation connected with this. This issue has become relevant when, first in Hungary in 2010 and then in Poland (2015), national-conservative governments introduced controversial laws that have been criticized for their potential to encroach democratic rule. In Poland, this has provoked a new wave of protest sweeping the country since December 2015. In particular, Poland has been known for both a vibrant civil society and protest culture that was central to the collapse of communism in 1989 (Osa, 2003; Ekiert and Kubik, 1999). Yet today, Poland is the second of the Central and Eastern European countries that raise fears of an authoritarian backslide in this region. Since the 2010 victory of the conservative Fidesz party under Prime Minister Viktor Orbán and its re-election in 2014, Hungary has introduced
encompassing “systemic reforms” allowing for changes of the constitution, a firmer government’s grip on the Constitutional Court, as well as controversial media laws—all accompanied by a rise in nationalist discourse in public media. Interestingly, also the PiS (Prawo i Sprawiedliwość/Law and Justice headed by Jarosław Kaczyński) government seems to use the Hungarian roadmap for its reforms. In January 2016, for the first time in its history the EU initiated a formal procedure against one of its member states, Poland. The investigation is intended to explore whether new laws introduced by the government of the conservative Law and Justice party violate the rule of law and encroach on fundamental democratic values. Some observers count already the days of the Polish democracy and see its only rescue in the pressure of the EU on the Polish government (Orenstein and Keleman, 2016). The question of the robustness of the Polish democracy is less interesting for this paper, as I want to focus on the KOD protest movement in Poland and the reactions of the PiS government to it. The KOD (Komitet Obrony Demokracji — Committee for the Defense of Democracy) intentionally refers to the legendary KOR (Workers’ Defense Committee), one of the core elements of the Polish dissident movement in 1970s, which suggests KOD’s leaders’ ambition to become a political movement that would keep the controversial decisions of the new government at bay. In March 2016, the KOD was officially registered in Warsaw as an association and became associated mainly with Mateusz Kijowski as a leader, a hitherto publically unknown IT technician.

I regard the KOD movement as a new form of protest and political participation “between the elections” in a post-transformation CEE society. Poland finds itself currently in a post-transformation phase, where the boundary between post-communist elites and elites that developed from the former anti-communist opposition ceased to give any meaning to politics, as both the government and the opposition draw on symbolic resources connected to the anti-communist resistance.

Given the fact that the events are unfolding as we are discussing the issue, the very limited data is available on the impact of citizen participation on the political process in Poland and only preliminary exploration of the KOD protest movement will be possible here. Against this backdrop, the paper tries to take a snapshot of the KOD movement and to examine it in the context of civil society concept. The paper argues that the KOD movement is located between civil and political society on the one hand. On the other hand, it draws strongly on the symbolism of the civil resistance during the last two decades of communism and leaves the dichotomy between post-communist elites and former opposition. This dichotomy was formative for the political participation in Poland in the 1990s and 2000s and, as I argue, has been replaced by new identity conflict between the symbolic politics of nationhood on the one hand and the liberal Europeanized vision of politics on the other. Still, the liberal Europeanized vision of politics reverts to symbolic resources of the anti-communist resistance as much as the symbolic politics of nationhood does.

The paper starts by exploring a number of conceptual questions with regard to civil society, such as the very concept of civil society, as well as the issue of participation and politicization linked with it. Then, against this backdrop the paper sketches the contours of the KOD movement, in particular regarding its autonomy vis-à-vis the political system, identity politics used by the movement and the issue of trans-nationalization of the KOD. I argue that the KOD movement is located at the intersection of civil society and political society and it became the main vehicle for both the political contestation and participation “between elections” in Poland after November 2015.

2. Civil society and participation

Scholars in political science and sociology often disagree on what constitutes civil society and how it relates to civic engagement and participation. This has however serious consequences for the assessment of the civil society’s role, in particular in post-communist Europe. As Ekiert (2012) and Ekiert and Kubik (2014) impressively show, a conventional “counting” of membership in voluntary organizations or measuring of the support for voluntary activities is highly misleading in the context of post-communist organizational dynamics. At the same time, the impact of civil society on the political system is highly variant across the region, but it is generally agreed that it has a stabilizing rather than challenging effects on state politics (Foley and Edwards, 1996; Edwards, 2009). Michael Walzer (1998: 123–24) suggests that civil society is the sphere of “uncorced human association and also the set of relational networks formed for the sake of family, faith, interest, and ideology that fill this space.” It is in these networks that individuals undertake collective action for instrumental, ideological and identity purposes, relatively independent of government and the market.

Many scholars disagree on what exactly constitutes these networks and what is the difference between political and civil society. Conventionally, civil society has been defined in a twofold way. Firstly, scholars like Robert Putnam (1994, 2001) use on the one hand the motivation to join civic associations as a defining feature of civil society, as individuals are supposed to join free associations mainly for sociability. On the other hand, more production and distribution-orientated collectivities such as the rotating credit associations described by Robert Putnam (1994: 167ff) would not fit the description, as they are economic in nature and result from the economic, rather than social needs of participants. These associations operate relatively independent of both market and government and should be viewed as integral to the economic system, rather than civil society, as their goal is to produce collective goods and are based on the common economic interests of the participants (Öststrom et al., 1994). Also, Mancur Olson (1965) sees economic logic in interest group formation that might be interpreted as civil society. However, in his argument the networks of interest groups operate to the detriment of society by choking off innovation and dampening economic growth.

In contrast, “leisure time associations” such as sports clubs, which may foster civicsness among participants, might also very well induce competition. However, if competition reaches a critical level, civil society in this understanding might damage economic and political performance of society, rather than improve governance and the quality of democracy
In both cases, the membership in leisure time organizations and common pool resources producing organizations do not have to translate into civic engagement or any other form of political participation—they can promote political passivity and bind resources away from engagement in non-self-interested activities.

Against this background, we shall distinguish between civil, political and economic society, all of which fulfill relevant functions vis-à-vis the state institutions and political bureaucracy. This is similar to some extent to what Linz and Stepan (1996) argue by delineating five ‘arenas’: civil society, political society, rule of law, bureaucratic structure, and economic society. Political society includes political parties and other political organizations that are not yet components of the state, but aspire to become one in terms of entering parliaments or having their politicians elected to a formal political post. In contrast, civil society consists of associations, networks and collectivities that surrender any ambition to become a part of the government and whose goal is not to produce or distribute material goods. This “dual autonomy” and “non-usurpation” (Schmitter, 1993) do not mean however that civil society always has to be of an apolitical nature from the outset. On the contrary, civil society can have direct political significance by assembling and channeling voices of different actors and layers of society, in particular those excluded from the formal decision-making process. Hence, civil society does not only fulfill a socializing function (embodied by the very concept of social capital), thus having indirect political significance, but it also directly voices civil interests and grievances.

This voicing of grievances does not always have positive effects on the government. Whereas the bulk of civil society scholars represent a normatively positive view of civil society, there are enough examples in recent and farther history where civil society had shown its destructive potential. One of such brilliant analyses is, for instance, Sheri Berman’s work on the impact of civil society on the collapse of the Weimar Republic (Berman, 1997). Also, in recent history, examples abound in former Yugoslavia, where radical nationalist groups were in the vanguard of ethnic cleansing and war crimes. Even in stable democracies, civil society can suffer of democratic deficit and become a danger to democracy (Brysk, 2000).

While the theoretical approximations provided above offer a descriptive definitional vocabulary for what civil society is, it appears to be more productive to define civil society in terms of what it does. In this sense, civil society can be conceptualized as a functional sphere of society, exiting to fulfill certain functional criteria (Agarín, 2011). Every self-organized and free association would therefore belong to civil society in the moment it fulfills certain functions. In general, scholars distinguish five positive tasks which civil society is expected to carry out with regard to a democratic regime (Croissant et al., 2000; Foley and Edwards, 1996). These are the functions that facilitate interactions between the citizen and the state, whether in terms of protection, mediation, socializing individuals into citizens, bridging social cleavages, or providing a sphere of free debate and discourse outside of the state and/or the family control. Since it is difficult to clearly distinguish between the civil, economic and political functions of civil society, civil associations could be conceived of as amphibian bodies, which can be active in different parts of the society and are sometimes only temporary. The best example would be the Polish solidarity movement of 1980–1981 which combined elements of a trade union (defending workers’ social rights) and a social movement (demanding more civil rights of the entire population).

Taking in consideration the various approaches, the interest of this article is mainly in the “contentious civil society”, that is, in civil society that challenges the state, even in democratic regimes (Ekiert and Kubik, 2014: 52). Cases in which civil society is involved directly in political and public life can be understood as contentious politics. These become mobilized when political opportunity structures change (Tarrow, 1998: 2). In this sense, civil society is closely connected with the political society. Consequentially, civil society is not necessarily a by-product of sociability of individuals but is reflecting a rational strategy of citizens that either challenge the government, or collaborate in order to push the state to be more accountable to citizens. One of the main aspects of such contentious civil society is that it uses appeal to symbolic politics to mobilize its supporters.

High levels of mobilization into civil society associations, be it of ethnic, nationalist or other character, are also acknowledged to polarize society at large, which is widely ignored by scholars holding the neo-Tocquevillian views on civil society (Putnam, 1994; Fukuyama, 1995; Barber, 1995). Societal polarization as a result of civil society activity seems to be among the most robust patterns found all over the world. Therefore, identity politics, that is, politics highlighting collective responses, can be not only a rational but also a highly effective instrument of mobilizing political support. As Klandermans (2014: 2) convincingly puts out, identity is one of three fundamental reasons why people participate in political protest, the other two being instrumentality and ideology. Through participation in political protest, collective identity becomes politicized and thus turns into the focus of a struggle for power. Civil society groups become involved in power struggles, as they attempt to establish, change, or defend a power structure (Klandermans, 2014: 4). As a result, politicized collective identity produces cognitive restructuring into opponents and potential and actual allies, which in turn involves strategic reformulation of conflict.

A further pertinent question relates to the standard of autonomy of civil society. Michael Walzer (1995) argues persuasively that one cannot choose the civil society alone, as the well-functioning civil society is strongly connected to a protective and compensatory role of the role. The state is expected to protect weak civil society groups against powerful ones and to restore the balance whenever it is needed. In this sense, it is not only the function of civil society to protect society from the state, as mentioned in the previous section. It is also the function of the state to protect weaker groups in civil society, as the ideal of society implicitly requires balance and symmetry between various civil associations. This is particularly relevant when civil society organizations suffer from democratic deficit themselves (Brysk, 2000).

It seems that the postulate of double autonomy of civil society vis-à-vis the government and market has often come under pressure in the context of complex societal transition from communism. While in consolidated democracies, civil society is
incapable of functioning without the state, we have plenty of evidence that it did so in the context of communist societies.

Still, without a reliable legal system, within which citizens can exercise their civil rights, there cannot be any advanced civil society. Philanthropic organizations frequently depend on tax exemptions, while churches require legal recognition (or at least some form of government toleration) and professional associations often need state support for the licensing practices. This is what allows the authoritarian states prone to manipulate civil society organizations. The cases of Russian law on foreign funding of civil society organization (NGOs) of 2012, so called “Russian foreign agent law”, is highly illustrative of how governments can institutionally weaken independent civil society while at the same time promoting quasi independent groups to implement the government’s political agenda. In Russia, the prime example could be the notorious biker club “Night Wolves”, known not only for its Kremlin sympathies but also for its active participation in the Crimean crisis and on the side of the pro-Russian militants in Donbas warfare.

The research on post-communist civil society groups has highlighted that many have little voluntary character, showing rather traits of economic society, since many NGOs, for instance in Ukraine, depend heavily on the interests of the sponsors turning them into sub-contractors or paid lobbyists (Stanton, 1999: 248). In many post-Soviet states as well there has been for a long time an elite continuity in local politics, where informal mechanisms of interest representation dominate. ‘Incorporated’ Soviet-style organizations have had much better possibilities to fulfill socializing and integrative functions vis-a-vis the population than ‘independent’ ones. Those organizations are closely associated with the state, which reproduces the model of civil society absorption by the state, thus denying the autonomy and spontaneous character of civil society (Axyonova and Bossuyt, 2016). As Agnes Gilka-Bötzw (2005: 13) shows in her account of Russian civil society at the local level, this led to an overrepresentation of conservative interests, especially of senior citizens and war veterans, whereas independent organizations had very little influence on local policy making. At the same time, the incorporated organizations suffer from institutional inefficiency and low professionalism, whereas the independent organizations provide professional and targeted services, but the local authorities are reluctant to coordinate with them (Agarin and Griviçiš, 2016).

Many studies of post-communist countries highlight the relevance of the relationship between state and civil society even further. For example, Ramona Coman (2005) argues that the reform of the judiciary system in Romania can be explained through the lenses of problematic relationship between state and civil society. According to Coman, between 1996 and 2000 the collaboration between the state (the Ministry of Justice) and civil society evolved on a spontaneous and mutual basis. On the one hand, the Ministry of Justice needed civil society to attain information on how to reform the judiciary system and to legitimize its policies through the participation of the judges. On the other hand, civil associations of judges needed the state in order to be heard and to influence the content of the reform. However, the laws elaborated between the state and civil society have never been adopted. The reforms were blocked as a result of the electoral change of government, after which the new justice minister was not interested in collaborating with civil society organizations (Coman, 2014; Mendelski, 2012).

The crisis of communism in Eastern Europe in the 1980s has been attributed mainly to the revolt of civil society against the communist state. In its totalitarian phase, the communist state was attempting to inhibit any spontaneous activity arising from civil society and to incorporate any independent organizations into new regime (Kemp-Welch, 2008). Supported by the ideology of Marxism-Leninism, its aim was to suppress private property and market structures along with an annihilation of spontaneous, non-state public space. Consequently, civil society and the communist state found themselves in a systemic conflict (Staniszkis, 1992). Civil society was by definition a locus of pluralism, which developed as the antithesis of the collectivist party state. Every state collectivism, be it fascism or communism, seeks to absorb civil society in the name of an ideology, thus destroying its autonomy and spontaneous character (Ekiert, 1996). For example, Polish trade unions and farmers’ groups have been often able to defeat or delay many economic and social reforms that they did not support, thus limiting the ability of the government to act. In the last fifteen years, professional interest groups (miners, nurses, farmers), often inspired by trade unions, put pressure on the various governments by organizing demonstrations and street blockades. Only in the authoritarian phase of socialism the spontaneously growing Polish social movement, known as Solidarity and developed from the first independent trade union, challenged the prerogatives of the collectivist state. During the transformation phase Poland, as other CEE countries, experienced a dramatic growth of NGOs and independent foundations, which are often viewed as the core of civil society (Ekiert and Kubik, 2014).

Against the background of these controversies, I argue that civil society should be identified as an overarching concept which includes non-political associations (Putnam’s choirs, bowling clubs and charities) as well as politicized NGO’s (for instance Amnesty International or Greenpeace) and politicized social movements (for instance the anti-globalization movement). Politicized social movements are located very closely to the political society and operate at the junction between civil society and political society. What is more, politicized social movements may even give birth to political parties, as was the case with the peace movement and environmentalist movement in Western Germany that spawned the Green Party in 1980s (Frankland and Schoonmaker, 1992) or the Solidarność which generated the majority of the political parties in Poland after 1989. This is in tune with the center-periphery model Jürgen Habermas uses to describe the relationship between the political society and the civil society (Habermas, 1996: 356–357). By slightly modifying the model, I argue that civil society belongs to the periphery of the political society and is connected with it through a number of “sluices” which transfer political resources in both directions. On the one hand, civil society produces pressure on the government and delivers ideas and vehicles for the opposition parties. On the other hand, it uses resources of the opposition parties to increase its impact in the public. While the center of political power includes institutions such as the government (with all state administration) and political parties (both within the parliament and aspiring to enter it) as well as processes such as elections and party competition, civil society belongs to the periphery of the power circuit. In particular, the contentious civil society ( politicized
NGOs and politicized social movements) uses “sluices”, through which it exercises normative pressure in the public sphere and supplies the opposition parties with ideas (and sometimes even personnel). In exchange, this part of civil society uses political parties from the opposition to increase its visibility and political weight in the public sphere.

3. Back to the 1980s? The KOD movement as a contentious civil society

In the case of Poland after October 2015 elections, the relationship between the state and the civil society seems to be particularly instructive, as we observe politicization of protest in league with parts of the political system. This resembles Western European cooperation between social movements and parts of the opposition, rather than post-communist development, typical for Russia or Ukraine, the nature of the latter being dependency of civil society on economic or political interest groups.

The Polish elections of October 2015 produced a major victory of the national-conservative PiS with 37.6 per cent of the votes and the majority of 235 out of 460 seats (51 per cent) as well as the victory of the conservative candidate Andrzej Duda in the antecedent presidential elections of May 2015 with 51.55 per cent of the votes. The shift to the right brought a one-party government for the first time since 1989 and consent between the government and the president. Since its very inception, there has been a number of controversies concerning the legal changes the new government has embraced. The first one was related to the nomination of five new judges for the Constitutional Court, which was carried out by the predecessor government in August of 2015 in a move to influence the set-up of the court in its favor. The new president decided however not to accept any oath of the newly elected judges. This brought upon him not only the criticism of many lawyers but also the fear that the PiS government was about to disempower independent institutions on its way to acquire even more power.

In December 2015 and January 2016, the new government of Beata Szydło with the consent of President Andrzej Duda, introduced and implemented controversial laws which enabled the conservative government to directly appoint the heads of public television and radio. At the same time, a new law on the Constitutional Court drastically changed the constitutional set-up and its decision-making rules, forcing it to make decisions exclusively with two-third majority, which, as many argue, makes it difficult for the court to act at all. These moves were viewed by many observers and parts of the citizenry as disempowerment of the check-and-balance principle based on the independence of institutions vital for democratic pluralism. After the announcement of the EU-investigation, a third, highly controversial law, was implemented and started on 7 February 2016. The new police law which allows the law enforcement agencies to use much broader surveillance measures. According to the new law signed by president Duda, the police and other security services were enabled to collect digital and phone data on citizens without court order. Only the contents of e-mails are not accessible to them without judiciary directive, while the names of contacts can be gathered without constraints.

In turn, the EU threatens consequences. Should the envisaged “structured dialogue” between the EU and Poland not lead to minimal consensus about adaptations or corrections of the laws in question, sanctions might impend, even the loss of voting rights of full member Poland in the EU — also an unprecedented step in the history of European integration. As a reaction, Prime Minister Szydło argued that “defamatory statements” were behind the measure of the EU and denied that there were any attempts by her government to impede democratic values and pluralism in Poland.

All these controversial decisions of the Polish government under Beata Szydło have been accompanied by mass protests in larger cities and even abroad. The demonstrations were organized by the Committee for the Defense of Democracy (KOD), led by an activist Mateusz Kijowski. The name KOD intentionally refers to KOR (Workers’ Defense Committee) which was a relevant element of the anti-communist opposition in Poland. It also refers to the idea of the “power of the powerless” coined by Vaclav Havel (1985) and further concepts derived from the anti-communist opposition in CEE. However, unlike in the past, the KOD movement draws its main legitimacy from the civil resistance against the new government of Law and Justice and at the same time strongly cooperates with oppositional parties represented in the parliament.

During the first large demonstration on 12 December, 2015 an estimated 50,000 of Poles have gathered in Warsaw in front of the Constitutional Court building and marched to the parliament building and then the presidential palace. The KOD supporters protested peacefully against the PiS government’s attempt to appoint its own candidates to the Constitutional Court. Similar marches were held in other Polish cities like Poznań, Wrocław, Łódź and Szczecin. Protestors waved Polish and European Union flags, chanting “This is Warsaw, not Budapest”, a reference to similar decisions of Hungarian Prime Minister Viktor Orbán whose one of his first decisions in 2010 was to change Hungary’s constitution (Deutsche Welle, 2015a, 2005b).

Since inception, KOD has been making various references to the Polish anti-communist opposition. For instance, the Committee declared that they will use a resistor as symbol of its opposition to the PiS government, very much as it was used by the anti-communist opposition during the martial law in Poland in 1981–83 (Dziennik Zachodni, 2015). Also, on 28 December 2015 in the “Roma Theatre” in Warsaw, KOD organized a concert “Artists for Democracy” which celebrated 25th anniversary of Lech Wałęsa becoming the first democratic President of Poland after 1989 (Lis, 2015). Even the name of the new KOD movement — KOD clearly refers to the KOR (Workers’ Defense Committee) that was established in 1976 in response to the imprisonment of Polish workers who took to the street and demonstrated against massive price increases. After the government crackdown on the protesters, the KOR helped the imprisoned workers and their families. The KOD demonstrations are modeled to some extent after the KOR, as they highlight their struggle against a quasi-authoritarian government. The protest methods of KOD bear some deliberate similarities to how KOR has operated. For instance, KOR members sent open letters of protest to the communist government and organized orchestrated actions. KOR was supporting workers that were subject to repressions by the communist government, while raising money through independent
publications and grants from Western institutions. KOR organized legal and financial support for the detained workers and their families and established the so-called Flying University (Uniwersytet Latający), a lecture series discussing freedom and other topics officially banned (Lipski, 1985).

By the same token, KOD toyed with the idea of organizing its own version of a Flying University to share information and ideas. Also, the KOR members collaborated with Western journalists as a method of dispersing independent information about the regime and producing international pressure on it. This is also a key feature of KOD, as its activists, first and foremost, the leader Mateusz Kijowski, give interviews to foreign press, for example, Die Zeit and the Guardian, on a regular basis. The most substantial difference between KOD and KOR is however that the communist government massively harassed KOR members by beating, incarceration, interrupting of lectures and other forms of intimidation, including searchers of KOR members’ houses. In contrast, the KOD demonstrations and other actions enjoy not only a full freedom of expression and organization but also are given police protection during their public protests. However, KOD activities are not only about protesting. For instance, according to statements by Kijowski, KOD is planning to draft its own compromise bill on the Constitutional Court, support it with a petition and introduce it to parliament. Kijowski said in this regard: “At the same time we appeal to the president, who took the oath to uphold the constitution, not to sign yesterday’s bill before considering its serious implications.” (Smith and Borger, 2015).

4. Mobilizing symbolic politics

According to the KOD leader Mateusz Kijowski, the movement is a form of non-partisan political participation. Kijowski states that “together we will stand as a nonpartisan front to protect democracy and show our discontent regarding what is being done to institutions in a democratic state” (Radio Poland, 2015). Still, various politicians of the opposition parties have been very vocal during the KOD demonstrations. Leaders of the opposition parties, in particular the Civic Platform, including Sławomir Neumann and Grzegorz Schetyna, former Minister of Foreign Affairs, the Polish Peasants’ Party, including the former Labor Minister Władysław Kosiniak-Kamysz and the Modern party, including Ryszard Petru, a newcomer in the parliament, were highly visible on December 12 and many other demonstrations afterward, with some of them calling the recent decisions of the governing party “a creeping coup d’état” and describing the PiS government as oppressive (Wróblewski, 2015). In addition, some of communist-era opposition activists, such as Władysław Frasyniuk, at the parallel KOD demonstration in Wroclaw on 12 December, and co-founder of the Solidarity trade union, Henryk Wujec, joined the protests. Ryszard Petru, one of the most visible opposition leaders in the Polish parliament said during the demonstration: “Today, it’s an assault on the constitutional court, tomorrow, it could be an assault on our freedom” (The Guardian, 2015).

Against this backdrop, KOD’s activities seem to shift constantly between civil and political society. On the one hand, KOD certainly belong to civil society, as it does not usurp political power directly and is not in league with any economic organizations, as it has been the case with many actors of civil society, for instance in Ukraine. On the other hand, it is used by politicians of the current parliamentary opposition as a political opportunity structure to voice their concerns and delegitimize the steps taken by the PiS government. This has become visible during the KOD rally which was organized on 27 February in Warsaw in defense of the Polish legendary workers’ leader and first non-communist President Lech Wałęsa (Cichowlas, 2015). On 18 February 2016 reports surfaced that Wałęsa supposedly collaborated with the Communist secret police in 1970–76 before becoming renowned leader of the opposition. According to the archival files, which have not been verified yet, Waleśa informed on other dissidents and received payment for his services. This issue has divided the Polish society between those who believe that all the files on Wałęsa have been fabricated and those who see him as a treacherous informer of the repressive communist secret police (BBC, 2016). The latter, including many politicians of the ruling PiS, have consequently questioned the legacy of Wałęsa and argued that his role as a solidarity leader has to be viewed in a different light. In this conflict, KOD has supported Wałęsa and his legacy as a leader of the Solidarity movement. During the 27 February KOD rally Mateusz Kijowski read aloud a letter sent by Wałęsa to his supporters, in which he called on the demonstrators to resist a reinterpretation of the Polish fight for freedom. This is in tune with what many Civic Platform (PO) leaders argue about Wałęsa and the necessity to salvage his status as a national hero. For instance, the leader of the opposition party PO Grzegorz Schetyna said during the rally: “We have come here to defend Lech Walesa and Polish history” (The Guardian, 2016). For the critics of the KOD it is a clear sign of the movement being politicized by the opposition parties. They argue that the KOD movement is not a spontaneous grass-root movement but rather a platform for the opposition parties to increase pressure on the government as a form of extra-parliamentary power struggle. The main argument is that both the PO and the Nowoczesna party actively participate in organizing the local structure of the KOD and also instruct party members in what form they should take part in KOD demonstrations by describing the type of banners and coordinating the time schedule (Wybranowski, 2016). The representatives of the government go even further and argue that the leaders of the KOD movement defend an oligarchic order which has been created by the Platforma Obywatelska-Polskie Stronnictwo Ludowe (PO-PSL; Civic Platform-Polish Peasants’ Party) in 2007–2015 (Do Rzeczy, 2016). Be it as it may, it is still too early to pass the judgment, as there is not enough data. Still, KOD does not seem to be a “pure” social movement, as it is treated as a political opportunity structure for various opposition leaders. However, this is not to be seen as a pathology as oftentimes in consolidated democracies “political parties must work within both state institutions and civil society in order to maintain or increase their power” (Maguire, 1995: 99). In addition, social movements or actors in civil society are inclined to collaborate with political actors to give political relevance to its activities and thus to keep a movement alive. The interactions between
parties and protest movements in Western Europe have been a rule, rather than an exception, in particular between opposition parties and opposition movements of the Left (Maguire, 1995: 100).

Throughout, the KOD leader Kijowski does not stop to highlight that the KOD movement does not usurp political power, which strongly resembles the concept of the self-limiting revolution (Staniszkis, 1984) applied to the Solidarity movement of 1980s. Kijowski often argues that he does not intend to organize Euromaidan in Poland, nor does he want to topple the PiS government in any other way (Rzeczpospolita, 2015). Nevertheless, KOD attempts to forge a specific identity of its members and activists and to establish a form of “counter-public” that was also the goal of the Solidarity movement (Bernhard, 1993; Michnik, 1985; Havel, 1985).

There are at least two elements of specific symbolic politics in this regard: (1) depiction of the PiS government as an authoritarian one and (2) the claim to represent the true will of the people as opposed to the PiS government and the President Andrzej Duda. The government is often portrayed as the threat to freedom and democracy and relays directly to the Polish anti-communist opposition, as KOD leaders describe the controversial laws introduced by the PiS government as an expression of authoritarianism and of a government which lied to its voters and now violates the constitution (Kazimierczuk, 2015; Siek, 2015). The “Us vs. Them” dichotomy is used to depict the government as an alien institution failing to present the true will of the people. During the KOD demonstration on 27 February 2016 the protestors were chanting “We, the people” in the defense of Lech Wałęsa (Klauziński and Dobiegała, 2016), which also suggested that they express the true concerns for the people, rather than the government. This again, resembles the arguments of the anti-communist opposition, according to which the legitimacy of the Communist Party, claiming to represent the interests of the working class, was baseless, as the communist regime was repressive against the very class it was supposed to represent. In order to stress the authoritarian nature of the PiS regime, KOD sometimes called it “demokratura”, a “portmanteau of democracy” and “dictatorship”, depicting Polish authoritarianism with a democratic window-dressing. The movement organized a series of protests on 23 January 2016. This time it was not about the new laws on the constitutional court and the public media but about a new surveillance law that is believed to expand the government’s access to digital data and loosens the legal protection of privacy against law enforcement activities. Kijowski said on this occasion: “Our privacy and intimacy is under threat, we can be followed, watched over both in our homes, and online” (Szary, 2016).

Also, on 5 February 2016, people used flashlights and cell phones to protest against new legislation in front of the Presidential Palace in Warsaw. This demonstration stressed that the PiS government introduces laws threatening to the individual freedom and endangered the very existence of the private sphere in Poland. While this demonstration took place in collaboration with Amnesty International and the Panoptykon foundation criticising the excessive use of surveillance powers of the government, the goal of the rally was to show how much threatening the new government became, regardless the fact that the PiS government actually enacted a surveillance law prepared by its predecessor, the PO-PSL government. Still, the KOD demonstrations point to the danger of living in a “matrix”, that is, an Orwellian society which the PiS is planning to introduce in Poland.

These activities emphasize that KOD views itself in the midst of the struggle against an authoritarian government which main goal is to demolish democracy in Poland, while often comparing the PiS government with the communist regime. One of the most controversial events during the Warsaw protests on 13 December 2015 was a demonstration in front of the house of Jarosław Kaczyński, the head of the PiS (Radio Zet, 2015). It was an imitation of annual demonstrations that had taken place for almost two decades in front of the Warsaw house of General Wojciech Jaruzelski, responsible for the introduction of the martial law in Poland in 1981 causing imprisonment and even death of numerous dissidents and workers (Łosińska et al., 2010). While Kaczyński himself was part of the political opposition to communism, such demonstrations are clear messages of the KOD supporters that they view the PiS government as authoritarian and dangerous to democracy.

The feeling of the KOD opposition to the government has been additionally strengthened by some statements of the state officials criticizing the movement. The head of the PiS party Jarosław Kaczyński said during an interview for the conservative TV Republika on 12 December, 2015 that the protestors belong to “the worst sort of the Poles” which carry with them the gene of national treason (TVN24, 2015). This very sentence has been picked up and used as a slogan by the demonstrators at the January and February KOD rallies (Pytlakowski, 2016). Also, the advisor to the president, Krzysztof Szczereski, argued in March 2016 that the KOD demonstrations are a threat to democracy as they use hate speech (Gazeta Wyborcza, 2016a), while another presidential advisor, Andrzej Zybertowicz, pointed out that KOD demonstrations might be an element of Russian hybrid war against Poland (Wilgocki, 2016). Such a rhetoric leads certainly to a further strengthening of the antigovernment stance of the KOD. This fragmentation of the national identity in Poland was pointed out by Kijowski himself who in an interview for the leftist magazine Political Critique (Krytyka Polityczna) argued in favor of Poland becoming one nation again, as the PiS government is believed to split the nation, rather than representing the true will of the people (Stummer, 2016). Despite a certain polarization rhetoric the KOD movement insists on its peaceful character and identifies itself as different from Arab Spring protests, Euromaidan in Ukraine, or occupation of the Taksim Square in Istanbul. This clearly supports the
notion that the KOD views itself as part of civil society by subscribing to the non-usurpation postulate. For Kijowski, KOD operates according to the tradition of Gandhi and Martin Luther King, rather than the logic of violent change. Interestingly, the KOD does not even apply any of the more confrontational civil disobedience techniques, which were typical for the Solidarity with its strike actions at the workplace and occupation of the public buildings. In contrast, it is the peaceful rallies and protests which seem to belong to the repertoire contention of the KOD, rather than, for instance, sit-ins, illegal boycotts or blockades of public buildings. The support for the KOD occurs merely through joining a protest on a weekend and showing of slogans and images, sometimes based on parodies. The KOD mobilizes its supporters both through the reference to the threatening others, that is, the PiS government, including President Andrzej Duda, and through imitation of symbols borrowed from the anti-communist opposition.2

The symbolic politics strengthens collective responses and contributes to politicization and radicalization. The protest behavior plays a central role in this context, as by collective protesting people develop a common identity framework, directed against the “threatening other”. As Klandermans argues (2014: 2), “once a protest movement gains momentum, it tends to divide a society into movement allies and opponents”. In addition, the social media tend to homogenize collective responses additionally, and the KOD movement started as Facebook platform and gained its support mostly online, before it became a “real” protest movement. The specific nature of Facebook allows for a quick removal of friends who disagree with some aspects of the movement and a rapid inflation of supporters. Moreover, the demonization of the KOD movement by the representatives of the government gives extra boost to the collective identity of KOD. Against this backdrop, we can expect growing politicization of collective identity surrounding the KOD movement. As the KOD movement is involved in power struggle that aims to change a power structure, it is likely to follow the logic of a politicized social movement. First shared grievances are expressed and a political actor is blamed for the predicament. Next, the sequence of politicizing events is organized and collective identity forged, in particular when a political actor him(her)-self applies blaming strategies against the movement. Against this background, the KOD should be viewed as a politicized social movement, rather than a political party, as it does not aim directly for political power, nor does it plan to have candidates for elections and thus refuses to become part of the formal political system. In contrast, it intends to change government policies through normative pressure on the ruling elite in the public sphere. At the same time, the KOD movement is not an outcome of structural social transformation but rather a response to short-term political change associated with perceived deprivation of political rights. In this sense, politics is a driver for the mobilization of KOD, where deeper seated notions about the role of state in regulating societal issues are secondary, as the shared grievances of the KOD supporters relate mainly to the image of the PiS government attacking the institutions of liberal democracy and threatening the position of Poland in the European Union.

5. Trans-nationalizing the KOD

As mentioned above, the KOD appears to operate at the borderline between the civil society and the political society. On the one hand it aspires to be independent of the political and economic society and presents itself as a non-partisan movement which main goal is to move the PiS government to respect the rule of law and in particular the constitution. By highlighting its independence and lacking political ambitions it claims to represent the society against various encroachments of the government. On the other hand, it uses the resources of the opposition parties to enhance its public resonance and its political impact. It deliberately takes a side in the power struggle which goes hand in hand with an antigovernment stance. In this sense, it operates in accordance with the ‘sluice model’ (Habermas, 1996: 356), as it both transfers resources into the political society (by siding with the opposition) and extracts resources from the opposition parties (to gain more political impact). For instance, KOD demonstrations clearly point to the PiS as the only culprit of the weakening of the Constitutional Court, while it ignores that already in June 2015, that is, under the PO-PSL government, a highly problematic Law on the Constitutional Court was passed, which can be interpreted as an attempt to politically rig the Constitutional Court by the government losing elections. This law was declared unconstitutional by the Court on 3 December 2015.

This amphibian nature of the KOD (both representing civil society-like and operating close to the political society) is particularly visible with its strategies to Europeanize and internationalize its activities. From inception the protesters of the KOD referred to the European identity and Poland’s integration with the EU, and depicted the PiS government as anti-European and Eurosceptical. This characterization was broadly echoed by the European and international press (FAZ, 2016; Deutsche Welle, 2015a, 2005b: Goettig and Barteczko, 2015; Day, 2015; McLellan, 2015).

According to Mateusz Kijowski, who was interviewed by the British newspaper the Guardian, the PiS government is “..... the end of democracy in Poland. They have broken the country.” In addition, the KOD leader said to the Guardian that “the United States and Europe need to speak loud and clear in condemnation. They must help us, otherwise Poland will leave the

2 Both the PiS government and the KOD relate themselves to the tradition of the Solidarity movement and extract from it an essential part of their legitimacies. Incidentally, today we can see former KOR activists on different sides of the conflict. For example, former KOR members, such as Krzysztof Loziński, a co-founder of the KOD and Antoni Maciarewicz the defense minister in the PiS government and vice-president of the PiS party represent the opposite sides of the identity politics in Poland. Identity politics is an instrument of mobilization of political support for both sides. The representatives of the government attempt to link the KOD movement to “oligarchic interest” of political parties previously in power, while the leaders of the KOD movement depict the actions of the government as creeping authoritarianism.
community of democracies” (The Guardian, 2015). The KOD rallies took place in Berlin, Brussels, London, New York, Hamburg, Oslo, Toronto and even Melbourne (Player, 2016; Gazeta Wyborcza, 2015), in parallel to the protests in Poland. For instance, on 19 December 2015 the protesters gathered in front of the Polish Permanent Representation in Brussels in support of the KOD and against the law changing the functioning of the Constitutional Court and destruction of democracy. On the very same day, around 150 people protested in front of the Polish embassy in Berlin and showed slogans such as “We demand the shortening of this parliament’s term” and “Duda is Kaczyński’s puppet”. At the same time, pictures of the former activists of the anti-communist opposition were shown (Londynek.net, 2015). In addition, the KOD representatives reached out to the European Greens in order to fortify its cooperation with the European parties and representatives of the European Parliament. On 25 January 2016 representatives of KOD met with members of the European Green Party and discussed the further development of the protest movement, in particular regarding the strategies of how to attract young people to the KOD activities (Partia Zieloni, 2016).

The leader of KOD Kijowski announced in March 2016 that the will carry out a series of foreign visits with partners abroad (Wmeritum.pl, 2016). These internationalization strategies give the KOD a much higher visibility in the international arena and also enhance the perception of seriousness of its postulates. The Europeanisation of the KOD postulates have been successful, as the EU politicians put pressure on the PiS government regarding the legal changes made after November 2015. On 30 January 2016 Frans Timmermans the First Vice-President of the European Commission and the Commissioner responsible for the rule of law asked Warsaw reconsider the recent laws regarding the public media and the Constitutional Court. The critique was reiterated in a subsequent letter to the Polish Minister of Justice on 13 January 2016, in which Timmermans highlighted the challenge both laws presented to freedom, pluralism and rule of law (Maurice, 2016; Süddeutsche Zeitung, 2015; EurActiv, 2015; Timmermans, 2015). Particularly, the first letter received a very heated response from the Polish Minister of Justice Zbigniew Złobro, calling the accusations not only groundless but also rejecting the intervention of the European Commission. A further letter was drafted as response to Timmerman’s correspondence by the Foreign Minister Witold Waszczykowski in February 2016 (Ministry of Foreign Affairs (2016)). The pressure of the European Commission was effective, as it provoked fierce reactions by the PiS government, which went clearly beyond the usual diplomatic exchange.

The role of the KOD was here essential, as the leaders of the movement were in exchange with the European Parliament and European politicians. For instance, on 19 January 2016, KOD published on its website a letter to the members of the European Parliament arguing that “the current Polish government leaves the road of democracy, freedom and rule of law” (Telewizja Republika, 2016a, 2016b). On 20 January 2016 the KOD leader Kijowski met in the European Parliament with a number of its members, for instance, with Guy Verhofstadt, head of the Alliance of Liberals and Democrats for Europe Group and Rebecca Harms of the Greens—European Free Alliance (Gazeta Wyborcza, 2016b). This exchange between the KOD leader and the MEPs took place in the context of the hearing the European Parliament devoted to the supposed violations of the rule of law in Poland, during which the Polish Prime Minister Beata Szydło had to answer a number of questions regarding the controversial laws introduced by the government (Pop, 2016). The very fact that the Polish Prime Minister has been “roasted” by MEPs suggests the degree to which KOD was able to politicize the Polish controversies at the European arena and find support, from Liberals, Socialists and Greens in the EP. Furthermore, the Europeanisation and internationalization strategies of the KOD considerably enhanced the salience of the legal changes in Poland with European and foreign politicians.

The head of the European Parliament Martin Schulz described the political developments in Poland as “coup d’état” and “Putin-style” politics (Radio Poland, 2016a). In the same vein, in January 2016 the EU Commissioner for digital economy and society Günther Oettinger heavily criticized the new media law in Poland and threatened legal consequences on the part of the EU (Süddeutsche Zeitung, 2016). Moreover, in January 2016, the EU decided to open a formal procedure against Poland to investigate whether new laws on the Constitutional Court and the public media introduced by the PiS government violate the rule of law and encroach on fundamental democratic values of the EU. However, it was not only the European politicians who put pressure on the government in Warsaw. On 10 February 2016 an open letter signed by three US senators – Ben Cardin, John McCain and Richard J. Durbin expressed concerns about the actions taken by the Polish government regarding the Constitutional Court and the public media. The letter argued that Poland’s actions “threaten the independence of state media and the country’s highest court and undermine Poland’s role as a democratic model for other countries in the region still going through difficult transitions”. The letter was posted on Ben Cardin’s website and depicted all three senators as having close ties to Polish-American communities in the US (Moskwa, 2016). The letter was supported by the American KOD spin-off — KOD Polonia USA and some activists in the Polish-American Community (KOD, 2016). The letter of the three senators was heavily criticized by the Polish Prime Minister Szydło as based on ignorance (Radio Poland, 2016b). The same type of reaction was expressed vis-à-vis the EU rule of law check, introduced by the EU. It was described by the government in Warsaw as misguided interference in a sovereign nation’s democratic system.

Still, the KOD strategy of trans-nationalization and Europeanization seems to reflect more than a mere means of increasing of the international pressure on the PiS government. The KOD activities refer often to Poland’s EU membership and the role Poland should play in the EU. During the KOD demonstrations both Polish and the EU flag are often being waved and references to Europe abound (Wprost, 2015). At the same time, the KOD frames the PiS government as a threat to Poland’s

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3 This again, resembles the strategy of the democratic opposition in Poland in the 1980s which also counted on the pressure of the Western countries, in particular the US which introduced economic sanctions after the Polish communist government introduced martial law in 1981.
membership in the EU and as conducive to isolation of Warsaw in Europe. During a KOD demonstration in Warsaw on 7th of May 2016 one of the main slogans was “We are Europe”, while Mateusz Kijowski claimed that the KOD demonstration “is for everyone loving Europe, democracy and liberty” (Polska Newsweek, 2016). While the KOD depicts the Polish nation as belonging to the EU and defines the EU as the guarantee of freedom and democracy in Poland, the PiS government regards the EU also as a source of illegitimate political pressure, exercised by institutions without democratic legitimacy (EurActive, 2016; Telewizja Republika, 2016a, 2016b). In this regard, KOD’s understanding of the Polish nation varies from the concept of the nation espoused by the PiS government and this difference becomes one of the main mobilization vehicles for the KOD support.

Regardless the outcome of the EU’s probing procedure and US pressure on Warsaw, the KOD was highly successful at establishing a counter-public, which conveys its own narrative of the steps taken by the Polish government, in particular as threatening to democracy and the rule of law. Mateusz Kijowski said in this context that “the Poles need to hear another information, not just the official one.” (De La Baume, 2016). This counter-public sphere established and perpetuated by KOD resembles the counter-public sphere postulated by Eastern European intellectuals such as Adam Michnik and Jadwiga Staniszkis in the 1980s (Michnik, 1985; Staniszkis, 1984) but seems to be far more effective. Certainly, KOD operates under different circumstances than the dissidents did in 1980s, as they were persecuted, put in jail and forced to leave the country. At the same time, Europeanization and internationalization gives the movement more tools for spreading its narrative and, in particular in the context of the public media law, to claim the legitimacy of its discourse. Of course, the question of the counter-public is not always a question of democracy and pluralism, as counter-publics are believed to form around excluded and minority interests. It is also a question of power and control and in particular a question of competing interests.

6. Conclusions

In this article I have attempted to tentatively sketch the contours of the KOD, the relatively new phenomenon for which there has been very limited data so far. I have argued that the KOD is a case of post-transformation politicized social movement and a good example of participation “between elections”. The KOD operates at the junction of civil society and political society with visible connections to the “official” politics. I have argued that this is likely to make the KOD an “amphibian body” combining both “civil” and political elements, the latter of an antigovernment character and in league with some political parties. While the KOD leaders stress their “non-usurpation” (one of the key features of belonging to civil society), the movement has also become a platform for political struggle with a visible involvement of the PO (at least between November 2015 and May 2016), Nowoczesna and PSL that are the primary opposition parties in the Polish Sejm. Against this backdrop, the KOD resembles to some extent, the German extra-parliamentary opposition of the 1960s and early 1970s, which also questioned the then-ruling elite in Germany (under the suspicion of fascism). Still, the KOD should not be identified as a sort of the opposition outside of the parliament, as it retains visible connections with the institutionalized party system. This is however not necessarily a new phenomenon. Some of the Western European social movements, mainly of the Left, collaborated with parts of the official political spectrum in order to increase their political relevance, for instance the Italian Communist Party and the Italian Peace Movement (Maguire, 1995: 108). On the other hand, the KOD represents itself as an independent and non-partisan movement that does not intend any revolutionary change which in turn reflects the image of civil society. Such an amphibian nature of some social movements has not been systematically explored in the research on post-communist societies so far, in particular regarding the theory of civil society. That is why the KOD movement could become a starting point for an analysis which would incorporate both the insights from social movement’s research and the theory of civil society.

Regarding the specific features of the KOD, there are two main issues. First, the KOD draws strongly on the symbolism of the anti-communist dissident movements such as the KOR and the Solidarity movement in Poland. In addition to the specific symbols and terminology of Solidarity, KOD views itself as defending the legacy of the Polish anti-communist resistance, also concerning civil resistance, rather than espousing revolutionary modus operandi. In this sense, the KOD belongs to the “reflexive civil society”, able to restrain itself in order not to become dangerous to the democratic order. The “repertoire of contention” the KOD seems to be even more limited than the one of the Solidarność, as the KOD focuses on rallies, petitions and open letters, while Solidarność also used more confrontational methods such as occupation of buildings or strike actions. At the same time, the KOD movement uses symbolic politics and a strategy of “othering” in order to establish its legitimacy in the Polish society. It operates under the circumstances of democracy and civil rights, different from the Polish anti-communist opposition subject to serious persecution. In order to uphold the consistency of “Us vs. Them”, it constructs the “other” as threatening to democracy and individual freedom.

Second, the KOD movement employs Europeanization and internationalization strategies as tools for both building pressure on the PiS government and creating a counter-public. The question remains however if KOD can indeed improve the quality of democracy not right before the elections, but during the mid-term. The functional expectation of civil society in neo-democracies such as Poland, discussed in the scholarly discourse, refers to its purpose as information provider for the government about societal problems to be solved and, in the first place, about infringements of freedom by the state. Civil society can stabilize expectations presented to the state, as it confronts the authorities with more aggregated and reliable information about the direction of reforms. It also provides an arena for articulation of popular will, which inhibits political alienation from the new political system as well as producing instruments that can be used in case of authoritarian deviation during the transformation process. However, during the first months of the KOD movement, the government reacted mainly
with a delegitimation strategy towards KOD activities, rather than accommodating strategy, thus increasing the politicization even further.

A final issue begs the question. While the KOD movement was successful at using the social media and European and international arenas to present its narrative, it is uncertain whether KOD will be able to mobilize protest in the mid-term. Until now, the KOD leaders have mainly reacted to the steps taken by the government, as each rally was organized around some specific laws or government actions. One of more pro-active measures of the KOD was to draft its own conciliatory proposal on the Constitutional Court, which was submitted to the parliament in May 2016. Whether the KOD leaders decide to go further and will, for instance, call for a national referendum to shorten the parliament’s term, thus challenging politically the government, or promote other forms of protest consistent with civil disobedience such as calling for entire judicial system to go on strike, is still uncertain. This is particularly relevant in the context of the decision of the Constitutional Court on 9 March 2016, which declared the Law on the Constitutional Court, prepared by the PiS government, unconstitutional, as well as in the context of the opinion of the Venice Commission on 11 March 2016, criticizing the PiS government for the new law on the Constitutional Court, leading to a full-blown constitutional crisis in Poland (Venice Commission, 2016).

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