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Compulsory Military Conscription as a Wartime Burden of Defence During the Kościuszko Uprising of 1794

*Przymusowy pobór do wojska jako ciężar wojenny na rzecz
obrony w okresie powstania kościuszkowskiego 1794 r.*

Introduction

Nowadays, public burdens for the defence of the State are an established institution under administrative law, combining the implementation of the constitutional duty to defend the Homeland and the obligation to bear public burdens and make public contributions.¹ The performance of public defence services

¹ M. Szalewska, *Ciężary i świadczenia publiczne*, [in:] *System Prawa Administracyjnego*, vol. 7: *Prawo administracyjne materialne*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, pp. 503–530; P. Pietrasz, *Ciężary i świadczenia publiczne, o których mowa w art. 84 Konstytucji RP – kilka uwag na temat zakresu przedmiotowego*, [in:] *Srebrna księga jubileuszowa upamiętniająca XXV-lecie Wydziału Prawa i Administracji*, ed. R.A. Stefański, Warszawa 2022, pp. 123–127; M. Konarski, *Constitutional Public Burdens as Part of Defence Economy*, “Przegląd Prawno-Ekonomiczny” 2023, no. 2, pp. 79–100.

(personal and in-kind) is one of the forms of universal defence duty, while obviously differing significantly from military service as such.²

The relevant literature emphasises that it is difficult to define the material scope of the provisions on the duty to defend, since it is not entirely clear which action is a defence of the State and which is an expression of bearing public burdens and making public contributions.³ As early as the 19th century, the scholarship of administrative law took the view that the State, in exceptional situations where its existence was at stake, had the right to require citizens to sacrifice their own lives in order to defend it, so that the private interest in preserving life had a duty to give way to the general interest of society in its preservation as a whole.⁴ In the view of the author of this discussion, the material scope of the duty to defend should be considered to coincide with specific personal services for the defence of the State, including military service, especially of an irregular nature, and therefore, in the context of the following discussion, related to compulsory recruitment into the army or the obligation to take part in a *levée en masse*.⁵

In the past – as well as in modern times – during armed conflicts, the replenishment of fighting armies through compulsory conscription was a common phenomenon that was often used. It was also known to Polish military tradition,⁶ which was also referred to in order to encourage people to join the insurgent army in 1794.⁷

² Cf. judgment of the Supreme Administrative Court of April 4, 2023, III OSK 2062/21.

³ K. Kozłowski, *Obywatelski obowiązek „obrony Ojczyzny” w świetle postanowień Konstytucji RP z 1997 r.*, „Przegląd Prawa Publicznego” 2020, no. 7–8, pp. 196–214.

⁴ A. Okolski, *Wykład prawa administracyjnego oraz prawa administracyjnego obowiązującego w Królestwie Polskiem*, vol. 3, Warszawa 1884, p. 35. Cf. S. Rundstein, *Szkody wojenne. Teoria nadzwyczajnych indemnizacji w prawie publicznem*, Warszawa 1916, p. 44, 259.

⁵ M. Rostański, *Zarys historii rozwoju wojskowości w Polsce (992–1792 r.) z 12-tu rysunkami*, Poznań 1922, pp. 35–36; J. Ignatowicz-Skowrońska, *Rozwój znaczeniowy wyrażenia „pospolite ruszenie” w polszczyźnie*, „Studia Językoznawcze” 2011, no. 10, pp. 79–95.

⁶ I.T. Baranowski, *Pospolite ruszenie*, Warszawa 1917; A. Kraushar, *Z dziejów pospolitego ruszenia w dawnej Polsce (quatuor quintum)*, „Sprawozdania z Posiedzeń Towarzystwa Warszawskiego, Wydział Nauk Antropologicznych, Społecznych, Historii i Filozofii” 1917, vol. 6(10), pp. 87–106; Z. Kaczmarczyk, S. Weyman, *Reformy wojskowe i organizacja siły zbrojnej za Kazimierza Wielkiego*, Warszawa 1958, pp. 62–77; Z. Spieralski, *Wymiar służby w pospolitym ruszeniu*, „Studia i Materiały do Historii Wojskowości” 1960, vol. 6(1), pp. 3–19; L.A. Wierzbicki, *Wici na pospolite ruszenie w Koronie w latach 1669–1673*, „Res Historica” 2008, no. 26, pp. 43–48; K. Łopatecki, *Organizacja, prawo i dyscyplina w polskim i litewskim pospolitym ruszeniu (do połowy XVII wieku)*, Białystok 2013; L.A. Wierzbicki, *Mobilization Activities in the Voivodeships of the Lesser Poland Province in the Summer of 1675*, „Res Historica” 2022, no. 53, pp. 79–93.

⁷ *Uniwersał do obywatelów, usuwających się od pospolitego ruszenia, kary na niesłusznych oznaczający*, The Central Archives of Historical Records, fonds no. 11, „Archive of the Kingdom of Poland”, Ms. 242, card 96 (hereinafter: CAHRAKPOL); *Akty Powstania Kościuszki*, vol. 1, published by S. Askenazy, W. Dzwonkowski, Kraków 1918, p. 413 (hereinafter: AKU I). For more, see

The system of compulsory conscription to the Polish insurgent army in 1794, being one of the numerous war burdens imposed on the population of the Polish soil by the insurgent authorities,⁸ was based on both a *levée en masse* and the proper conscription of recruits.

Both types of recruitment were into Polish-Lithuanian irregular formations consisting of villagers and townspeople, and constituted the most severe personal burden of a military and wartime nature in the period of interest to us. It involved not only the possibility of losing one's life during hostilities, but also the deprivation of agricultural labour in the case of recruits coming from the countryside and the deprivation of productive forces in crafts in the case of recruits coming from the towns. In addition, conscription entailed considerable financial costs for the noble manors and peasant homesteads, as they were responsible for arming and feeding the recruits. It should also be stressed that, in addition to recruitment mandated by official regulations, there were often cases of people being ruthlessly conscripted directly from the streets by patrols in the various Warsaw precincts. In this way, by means of physical violence, so-called "loose persons" found in inns, squares and streets, or who had been drinking or brawling, were sent to the barracks.⁹

A *levée en masse* on Polish soil in 1794 was based primarily on the models of revolutionary France and was formed simultaneously with the army of the French Revolution, borrowing many things from it.¹⁰

In a letter to Franciszek Barss (1760–1812), a Warsaw lawyer and close friend of Tadeusz Kościuszko (1746–1817), dated 6 December 1793, Hugon Kołłątaj (1750–1812) praised the effectiveness of this kind of armed formation, writing as follows: "The popular movement constitutes an unbreakable force in France to such an extent that the most intelligent and brave troops of the enemy's united forces are incapable of breaking it, let alone destroying it".¹¹

M. Konarski, *Osobiste i rzeczowe ciężary wojenne w świetle prawodawstwa okresu insurekcji kościuszkowskiej 1794 roku*, "Folia Iuridica Universitatis Wratislaviensis" 2020, vol. 9(2), pp. 12–19.

⁸ M. Konarski, *War Burdens and Requisitions in the Period of the Kościuszko Uprising of 1794*, "Przegląd Prawa Administracyjnego" 2021, vol. 4, pp. 25–50.

⁹ K. Bauer, *Wojsko koronne powstania kościuszkowskiego*, Warszawa 1981, p. 60.

¹⁰ S. Herbst, *Z dziejów wojskowych powstania kościuszkowskiego 1794 roku*, Warszawa 1983, p. 420. Cf. S. Lytle, *Robespierre, Danton, and the levée en masse*, "Journal of Modern History" 1958, vol. 30(4), pp. 325–337; A. Forrest, *Conscripts and Deserters: The Army and French Society During the French Revolution and Empire*, Oxford 1989, pp. 20–42; T. Hippler, *The French Army, 1789–1914: Volunteers, Pressed Soldiers, and Conscripts*, [in:] *Fighting for a Living: A Comparative History of Military Labour 1500–2000*, ed. J.-E. Zürcher, Amsterdam 2014, pp. 415–420; V. Mainz, *Days of Glory? Imaging Military Recruitment and the French Revolution*, London 2016, pp. 143–184.

¹¹ *Listy Hugona Kołłątaja pisane z emigracji w r. 1792, 1793 i 1794*, prepared by L. Siemieński, Poznań 1872, p. 161. This letter is the last known correspondence between the two political activists. From February 1794, Barss was in Paris with the task of obtaining the assistance of the French revolutionary government for the uprising being prepared in Poland, see A. Kraushar, *Barss*.

It should be added that a number of other institutions – mainly legal – was created under the influence of the legislation of revolutionary France or the United States, which Kościuszko had encountered during the war in America and during his stay in Paris in 1793.¹²

Tadeusz Kościuszko, whose style of proclamations and reports during the insurrection referred to his experiences during the American Revolution, probably also wanted to see in the a *levée en masse* an American militia, which in the early days of the North American colonies' war of independence solely carried the burden of fighting the enemy, but he was aware of the different Polish conditions to understand that without the support of a regular army, a *levée en masse* could no longer play a role in military operations. What is more, a *levée en masse* could not be an equivalent of the American militia, as it was composed of serfs, and not of free citizens like in the militias.¹³

According to calculations made at the time, it was hoped to mobilise around 140,000 recruits from all areas covered by the uprising (Voivodeship of Sandomierz, Podlissia, Lublin, Rawa, Mazovia, Warsaw and its surroundings as well the Greater Poland), which ultimately ended up with 43,343 recruits, meaning that the uprising authorities' provisions for conscription were only fulfilled in 31%.¹⁴

The state of research and methodology

The issues discussed in this article so far have not been analysed from the point of view of substantive administrative law, or more precisely the collective category of public burdens and contributions. Both of these categories of obligations are borne in these forms by entities not connected in an organisational and legal manner with the State apparatus, in connection with the fulfilment of public tasks by the State.

Palestrant warszawski i jego misja polityczna we Francji (1793–1800), Warszawa 1904, p. 15, 24 ff.; J. Kocznur, *Sylwetki wybitnych adwokatów: Franciszek Barss*, "Palestra" 1964, no. 1, pp. 37–42.

¹² W. Bartel, *Ustrój władz cywilnych powstania kościuszkowskiego*, Wrocław 1959, pp. 237–238.

¹³ M. Kukiel, *Dzieje wojska polskiego w dobie napoleońskiej 1795–1815*, vol. 1, Warszawa 1918, pp. 4–5; J. Kowecki, *Pospolite ruszenie w insurekcji 1794 r.*, Warszawa 1963, pp. 48–51. Cf. M.M. Drozdowski, *Revolucja amerykańska w polskiej myśli historycznej*, Warszawa 1976, p. 36. It should be borne in mind that the idea of replacing the former *levée en masse* with militias was already put forward during the period of the Four-Year Sejm. See E. Rostworowski, *Sprawa milicji mieszczańskich w ostatnim roku Sejmu Czteroletniego*, "Przegląd Historyczny" 1955, no. 4, pp. 561–584. Cf. D. Moran, A. Waldron, *The People in Arms: Military Myth and National Mobilization since the French Revolution*, Cambridge 2006, pp. 8–48; T. Hippler, *Citizens, Soldiers and National Armies: Military Service in France and Germany 1789–1830*, London 2007, pp. 18–23, 56–62.

¹⁴ K. Bauer, *Wojsko koronne...*, pp. 109–110.

As noted in the introduction, compulsory military service as a category of military obligation for the defence of the State and obligation to bear public burdens and provide public contributions was not understood at the end of the 18th century in the way we understand it today, nevertheless, using today's methodological tools, it clearly has to be placed in this sphere of State administration activity from both the subjective and objective points of view.

The scarce literature on the subject of interest to us to date is the result of research primarily by military historians and relates primarily to organisational and military aspects associated with the compulsory conscription of recruits. I have in mind here the only comprehensive monograph on the Kościuszko Uprising's mass mobilisation, written in 1963 by Jerzy Kowecki (1930–2019), as well as smaller academic works by Stanisław Herbst (1907–1973), Zdzisław Sułek (1924–1999), Krzysztof Bauer and other researchers of the 1794 Uprising. In the course of further analysis, I will refer to the findings of these authors, with the primary source for direct analysis being the Kościuszko legislation contained, in large part, in source materials published by Szymon Askenazy (1866–1935) and Włodzimierz Dzwonkowski (1880–1954), as well as archival materials coming mainly from the Archives of Historical Records in Warsaw.

Obviously, this study does not pretend to be a comprehensive analysis of the issue in question, which is necessarily necessitated by the limited editorial framework, but the author has attempted to refer, in a synthetic and comprehensive manner, mainly to the legal and administrative aspects of the phenomenon in question, making use of numerous source materials and applying the most effective research methods. Among these methods, apart from basic logical and linguistic analysis, it is worth mentioning the classical legal-historical method used in the research, which is one of the elements of the historical approach in jurisprudence.¹⁵

¹⁵ I. Łyskowski, *O metodzie w badaniach prawno-historycznych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1929, no. 1, pp. 1–9; J. Bardach, *Themis a Clio, czyli prawo a historia*, Warszawa 2001, pp. 11–33; P. Dobosz, *Problemy metodologii współczesnej nauki prawa administracyjnego na tle metody historyczno-prawnej*, "Kwartalnik Prawa Publicznego" 2001, vol. 1(1), pp. 9–47; M. Górnicka, *Wersja systemowa metody historyczno-prawnej na przykładzie prawa dowodowego w polskiej procedurze karnej*, "Folia Iuridica Universitatis Wratislaviensis" 2015, vol. 4(2), pp. 9–34; D. Szczepanik, *Miedzy historią a prawoznawstwem. Refleksje teoretyczne o historii prawa*, "Czasopismo Prawno-Historyczne" 2019, vol. 71(2), pp. 351–367.

Administrative bodies of the insurgent authorities in matters of recruitment

In 1794, no unified structure of insurrectionary bodies was created. They were in charge of organising the improvised formations of the insurrectionary army and securing the supply of new forces to the regular army. Admittedly, among the central bodies of the insurrectionary government – first the Provisional Council (hereinafter: PC),¹⁶ and then the Supreme National Council (hereinafter: SNC) – recruitment matters were to be dealt with by the Military Needs Division of the SNC,¹⁷ and more specifically Franciszek Antoni Tykiel (before 1770–1832) and Józef Wybicki (1747–1842), but, as the relevant literature emphasises, “it is not clear what role he played in this field”, for although the regulations gave this department managerial functions in this area, it is most likely that “practical considerations seem to have led to the fact that the matter of recruitment was delegated to the order commissions, which were the government’s executive bodies in the field, and which were to hand recruits over directly to the commanders of the line troops”.¹⁸

Ultimately, therefore, the department devoted most of its time and work to arming and supplying the army, and the concern for recruiting and preparing it for battle rested with the committees mentioned above, which I will discuss in a moment.

Certainly, no small role in the recruitment-related field fell to the SNC Food Department, which, as obliged to provide food for the population and the army, was to watch over the state of agriculture and decide the impact of orders on the percentage of the agricultural population in the military recruitment process.¹⁹

¹⁶ *Organizacja Rady Najwyższej Narodowej drukowana*, CAHR AKPOL, Ms. 319, card 3. The announcement of this first insurrectionary government was contained in the Cracow Act, while the organisation, composition and procedure of the second insurrectionary government – the SNC – was contained in a normative act promulgated by Kościuszko on 21 May 1794, titled *Organizacja Rady Najwyższej Narodowej doczesnej dla Polski i Litwy*, CAHR, fonds no. 10, “The Lithuanian Metrica”, Ms. 111, cards 1–8 (hereinafter: CAHR LM); AKU I, pp. 199–204. Cf. J. Dudziński, *Rada Zastępcza Tymczasowa – pierwszy rząd insurekcji kościuszkowskiej 1794 r.: zarys działalności*, “Roczniki Humanistyczne” 2010, vol. 2, pp. 161–201.

¹⁷ *Ordynacja dla Wydziału Potrzeb wojskowych*, AKU I, pp. 252–254; *Akta z okresu powstania kościuszkowskiego*, CAHR AKPOL, Ms. 270, cards 31, 36; *Akta Wydziału Potrzeb Wojskowych w Radzie Najwyższej Narodowej*, CAHR AKPOL, Ms. 288, cards 122–127. Cf. J. Dudziński, *Wydział Potrzeb Wojskowych i Komisariat Wojskowy za rządów Rady Zastępczej Tymczasowej – cywilne organy władzy wojskowej (19 kwietnia – 28 maja 1794 roku)*, “Z Dziejów Prawa” 2013, vol. 6(14), pp. 31–33.

¹⁸ W. Bartel, *Ustrój władz cywilnych powstania kościuszkowskiego*, Wrocław 1959, p. 147.

¹⁹ *Różne pisma z powstania kościuszkowskiego*, CAHR AKPOL, Ms. 257, card 389; *Akta Wydziału Żywności Rady Najwyższej Narodowej*, CAHR AKPOL, Ms. 282, cards 113–114; *Książka sesjów [Protokół sesji Wydziału Żywności w Radzie Najwyższej Narodowej]*, CAHR AKPOL, Ms. 303, cards 1–21.

This was, of course, aimed at minimising agricultural losses due to the deprivation of agricultural labour in favour of attracting recruits for the insurgent army.

The role of the SNC's Department of National Instruction, which dealt with insurrectionary propaganda, should also be highlighted here. Its tasks thus included agitation among the peasants for their participation in the Uprising, as well as urging the clergy to broadly support the population's participation in the Uprising.²⁰ A similar role was also played by the SNC's Order Department, which, as responsible for announcing in print and distributing around the country all the regulations of the insurgent authorities, took an active part in the process of the conscription of recruits.²¹

One should not forget the organisation of the armed forces in Lithuania, where the outbreak of the Uprising was of great importance to Kościuszko thanks to the fact that two tsarist divisions stationed there were broken up and the corps directed from Livonia and north-western Russia was held back as long as possible, preventing the Russians from marching on Warsaw. In Lithuania, the executive body of the Supreme Commander Kościuszko was the Central Deputation of the Grand Duchy of Lithuania, whose organisational structure corresponded to the SNC,²² which meant that the issue of conscription was also concentrated in an internal government body called the Department of Military Needs, just like in the Crown. In the field, in addition to order commissions, the Lithuanian insurgent authorities delegated plenipotentiaries, who were called caretakers, to work in the field (*powiat* districts). Their main task was to execute a *levée en masse*, i.e. to lead the *levée en masse* to a camp of the regular army or to supply recruits.

As mentioned earlier, the main mission in relation to both recruiting in the Crown for a *levée en masse* and supplying proper recruits rested with the local insurrectionary authorities, which, from the establishment of the first one in Cracow on 24 March 1794, became the commissions of order,²³ whose organisation was finally unified on 30 May 1794.

²⁰ *Organizacja Rady Najwyższej Narodowej doczesney dla Polski i Litwy*, AKU I, pp. 202–203.

²¹ *Wzięcie w rekwizycję wszystkich drukarniów warszawskich*, AKU I, p. 351.

²² *Organizacja Deputacji Centralnej Wielkiego Księstwa Litewskiego*, CAHR APOL, Ms. 242, card 96; *Protokół rezolucji i innych czynności Rady Najwyższej Narodowej zapadłych od dnia 28 maja 1794 roku do 23 lipca tegoż roku*, CAHRLM, Ms. 111, cards 52–60; AKU I, pp. 229–233. For the proclamations and orders of General Jakub Jasiński on the conscription of proper recruits and of the *levée en masse*, see *Odezwa do Narodu Litewskiego*, CAHR AKPOL, Ms. 247, card 268; *Instrukcja dla wkraczających w kordon rosyjski*, CAHR AKPOL, Ms. 247, card 269; *Rezolucja na memoriał Komisji Porządkowej Grodzieńskiej względem dostawiania zastępców*, AKU I, p. 459.

²³ *Organizacja komisji porządkowych*, CAHR LM, Ms. 111, cards 29–37; *Akta powstania i inne pisma drukowane Rady Najwyższej*, CAHR AKPOL, Ms. 318, cards 8–11; *Organizacja dla wszyst-*

With regard to the way in which supplementary formations made up of recruits were organised, the individual voivodeships formed a *levée en masse*,²⁴ which remained under the command of major-generals.²⁵

It was these commanders who had the most important function in the pre-insurrection preparations as they were the ones who were to organise the local armed forces and command them. In addition to this, the smaller units of the lands and *powiat* districts consisted of units of individual parishes commanded by parish mayors, while the smallest formation was made up of groups led by heirs, bailiffs or richer peasants.²⁶

A not insignificant role was also played by the commissioners to the army columns and field plenipotentiaries established for specific lands (voivodeships, *powiat* districts), whose scope of competence was similar to that of the civilian commissioners sent to the army in France.²⁷ Their duties included ensuring that the order commissions, in accordance with orders from the central authorities, supplied recruits and organised a *levée en masse* without disruption. They sometimes reprimanded local authorities for being too tardy in implementing mobilisation orders, and condemned the nobility for supplying recruits unfit for service or for evading to take part in a *levée en masse*.²⁸ It should be stressed that the participation of these officials in the organisation of the common movement and the mobilisation of the country was serious, while their political nature was not uniform throughout the Uprising.

Insurrectionary law and its application in cases of forced conscription of recruits

The conscription of recruits for the army commanded by Tadeusz Kościuszko was regulated in detail by several legal acts promulgated by the insurgent au-

kich ogólnie komisji porządkowych, AKU I, pp. 216–220; “Korespondent Narodowy i Zagraniczny” of 3 June 1794, no. 45 (supplement), pp. 1009–1014.

²⁴ J. Kowecki, *op. cit.*, pp. 138–259.

²⁵ *Ibidem*, pp. 132–137.

²⁶ Z. Sułek, *Organizacja armii powstańczej*, [in:] *Zarys dziejów wojskowości polskiej do roku 1864*, vol. 2: (1648–1864), ed. J. Sikorski, Warszawa 1966, p. 248.

²⁷ H. Wallon, *Les représentants du peuple en mission et la justice révolutionnaire dans les départements en l'an II* (1793–1794), vol. 4, Paris 1890, p. 46, 51, 135, 183, 234, 284, 295, 432; J. Lynn, *Bagnety Republiki. Motywacja i taktyka armii rewolucyjnej Francji 1791–1794*, Oświęcim 2016, pp. 119–121.

²⁸ *Różne pisma i raporty z okresu powstania kościuszkowskiego*, CAHR AKPOL, Ms. 253, cards 114–116.

thorities.²⁹ As is known, the Act of Uprising of Citizens, Residents of the Cracow Voivodeship did not mention the issue of organization of the armed forces³⁰ – including the forced conscription of recruits, just as it was silent on political issues, including those concerning peasant reforms.³¹

At the end of March 1794, Kościuszko ordered the voivodeship's population aged between 18 and 40 to be called to tool up within two weeks and to carry out military drills on Sundays in all towns and villages (a *levée en masse*).³² Further, orders related to the mass movement came from 28 March and 2 April, and were mainly contained in the proclamation of 4 April,³³ which, although it repeated in part the provisions of 25 March, supplemented them with an order to form a mounted voivodeship militia.³⁴ The armed force was thus ultimately to consist of the militia (aged 18–28), a *levée en masse* and *rekrut dymowy*, i.e. one infantryman per five chimneys (followed by one horseman per 50 chimneys), armed with either a rifle or a pick and axe.³⁵ On April 19, the first local insurgent admin-

²⁹ For more on the issues of conscription and the army's food provisioning system in the period immediately preceding the Polish-Russian War and then the Kościuszko Uprising, see J. Gordziejew, *Komisje Porządkowe Cywilno-Wojskowe w Wielkim Księstwie Litewskim w okresie Sejmu Czteroletniego (1789–1792)*, Kraków 2010, pp. 273–319. On sources concerning the activities of civil-military order commissions, see P. Jędrzejewski, *Akta Komisji Porządkowych Cywilno-Wojskowych (1790–1794)*, "Krakowski Rocznik Archiwalny" 2013, vol. 19, pp. 129–155.

³⁰ Cf. E. Gomulski, *Problemy prawa wojny w Polsce czasów insurekcji kościuszkowskiej*, Wrocław 1986, pp. 26–29.

³¹ Reforms were only implemented in the months following the uprising. The serfdom was reduced, but serfdom-based farms were to continue to exist, see A. Świętochowski, *Historia chłopów polskich*, Poznań 1928, pp. 246–253; B. Leśnodorski, *Polscy jakobini. Karta z dziejów insurekcji 1794 roku*, Warszawa 1960, pp. 243–249; J. Kowecki, *Chłopi czynszowi w reformach insurekcji 1794 roku*, "Przegląd Historyczny" 1964, no. 1, pp. 100–103; M. Konarski, *Reflections on the Reform of the Legal Situation of Peasant During the Kościuszko Uprising of 1794*, "Review of European and Comparative Law" 2018, vol. 35(4), pp. 41–72.

³² *Zalecenie pierwsze Naczelnika do Komisji Porządkowej Krakowskiej z dnia 25 marca 1794 r.*, [in:] T. Kościuszko, *Odezwy i raporty uzupełnione celniejszymi aktami odnoszącymi się do powstania narodowego 1794*, prepared by L. Nabelak, Kraków 1918, p. 53 (hereinafter: *Proclamations*).

³³ *Uniwersał względem uzbrojenia wszystkich mieszkańców, dostawienia rekruta konnego, musztry i ściągania zbrojnego nieprzyjaciół*, [in:] *Proclamations*, pp. 97–100.

³⁴ K. Bauer, *Milicja warszawska podczas insurekcji kościuszkowskiej*, "Studia i Materiały do Historii Wojskowości" 1973, vol. 19(1), pp. 195–200.

³⁵ *Akty Powstania Kościuszki*, vol. 3, published by W. Dzwonkowski, E. Kipa, R. Morcinek, Wrocław 1955, pp. 82–83; *Proclamations*, pp. 51–55. Cf. T. Korzon, *Dzieje wojen i wojskowości w Polsce*, vol. 3, Kraków 1912, p. 190; T.M. Nowak, J. Wimmer, *Historia oręża polskiego 963–1795*, Warszawa 1981, pp. 602–603. For more on the equipping of the recruits, which was paid for by the Public Treasury, see *Akty Powstania Kościuszki*, vol. 2, published by S. Askenazy, W. Dzwonkowski, Kraków 1918, pp. 172–173 (hereinafter: AKU II); National Archives in Kraków, fonds no. 678, "The Collection of Zygmunt Gloger", Ms. 652, cards 21–24.

istration body, the Cracow Voivodeship Order Commission, was established³⁶ and published in print a proclamation that ordered “that every Citizen, having a landed estate, should go at the head of his community with all the weapons he can carry, and that he should join the army of the Commonwealth.”³⁷ Persons of old age and poor health unfit for this expedition, or occupied with public service, were exempted from this obligation. However, that if they had a son they were obliged to send him at the head “with the same force.”³⁸ The obliged persons who did not have a male descendant were obliged to send two men separately from each village “with horses, weapons and a monthly pay from their property”, with the same obligation falling on the clergy, as owners and citizens.³⁹

On the same day, the PC issued proclamations to the citizens⁴⁰ in which it was stated that “in order that everyone would be ready to defend the country, they should try to spread this spirit of zeal throughout the country (...) should anyone, burning with love of country, wish to enlist a separate horse flag, we invite him for the love of country to address the Council.”⁴¹

A few days later, on 21 April, the PC issued another act which recommended, among other things, “that it [the Order Commission of the Duchy of Mazovia – M.J.K.] should immediately to convene the mayors of all the precincts, whom it shall instruct to order, from each house in their respective precinct, an armed farmer or other man presented and sworn to by him to appear without delay.”⁴²

In view of the need to replenish the Warsaw garrison, on 23 April, on the orders of General Stanisław Mokronowski (1761–1821),⁴³ the PC ordered 4,840 recruits from Warsaw to be sent.⁴⁴ It was resolved that the distribution of recruitment

³⁶ A. Wilkoszewski, *Komisje Porządkowe Koronne za powstania Kościuszkowskiego*, “Przegląd Historyczny” 1929, vol. 28(2), pp. 219, 221–222; W. Bartel, *op. cit.*, pp. 85–108. For more on the activities of this commission, see P. Jędrzejewski, *Krakowska Komisja Porządkowa w dobie powstania kościuszkowskiego*, “Krakowski Rocznik Archiwalny” 2015, vol. 21, pp. 53–74.

³⁷ *Uniwersał nakazujący pospolite ruszenie się obywatelom i mieszkańcom na obronę Ojczyzny*, [in:] *Proclamations*, pp. 106–110.

³⁸ *Ibidem*, p. 108.

³⁹ *Ibidem*.

⁴⁰ For more on the establishment of the Council (both in Warsaw and Vilnius) and the organisational regulations governing its activities, see W. Bartel, *op. cit.*, pp. 40–84; E. Gomulski, *op. cit.*, pp. 31–35.

⁴¹ *Odezwa z doniesieniem o akcesie i zachęceniem do dołączenia się i obrony*, and *Odezwa względem czynienia ofiar*, AKU I, p. 9.

⁴² *Urządzenie względem wart, przez obywateli odprawiać się mających*, CAHR LM, Ms. 110, card 17; AKU I, p. 14.

⁴³ C. Witkowski, „Waszyngton Polski”. *General Stanisław Mokronowski – komendant warszawskiego garnizonu w czasie Powstania Kościuszkowskiego 1794 roku*, “Studia i Materiały Centralnej Biblioteki Wojskowej im. Marszałka Józefa Piłsudskiego” 2021, vol. 15(1), pp. 35–48.

⁴⁴ *Rekrut z Warszawy uchwalony*, CAHR LM, Ms. 110, cards 44–45; AKU I, p. 33.

would be in proportion to the existing 6 classes of houses (chimneys) provided by law, where the obligation to provide 1 recruit each covered: 4 class I chimneys, 5 class II chimneys, 6 class III chimneys, 7 class IV chimneys, 8 class V chimneys and 9 class VI chimneys. In view of the fact that, as a result of such a distribution, it sometimes fell to several residents to provide one recruit, the selection was ultimately entrusted to the precinct mayors. The PC, however, sent a separate proclamation to the mayors of divisions instructing them after consultations with the citizens of their respective precincts,⁴⁵ that they arrange the way of recruitment, or the chimneys marked to what extent which house is to contribute to recruitment and clothing of the recruits, and that recruits are to be handed over to the command, which they are to do immediately and quickly.⁴⁶ The requirements for recruits were that they should be "healthy in body and mind" and aged between 18 and 40. Recruits were obliged to report to the cadet barracks at the Kazimierzowski Palace in Warsaw (now the seat of the Warsaw University Rector's office at 26/28 Krakowskie Przedmieście St.) immediately, but no later than within 8 days (in the case of villages near Warsaw within 10 days) of the announcement of the resolution.⁴⁷ A few days later, the PC announced that the population had been conscripted by recommending that the Commission of Order take a census of all the inhabitants without exception who made up the capital's armed forces, i.e. men between the ages of 15 and 50 years of age, by the precinct mayors.⁴⁸

A notice to this effect was ordered to be printed by the Executive Directorate of the Police Department and distributed to all the precinct mayors. It should be emphasised at this point that the young inhabitants of the Polish soil in particular were often unwilling to participate in the Uprising. For example, as early as the end of April 1794, the PC was informed about numerous situations of young people fleeing from villages near Warsaw to Prussia in order to avoid forced recruitment, which it tried to counteract by means of agitation in the form of persuading and encouraging peasants during church services from the pulpits.⁴⁹ To this end, the

⁴⁵ Warsaw precincts as territorial subdivisions replaced the *jurydyki* abolished by the April Act of 1791, see *Volumina Legum*, vol. 9, Kraków 1889, pp. 215–219, 291–297. In this way, Warsaw was divided into 6 precincts, with Praga constituting precinct 7. The precincts were divided into *dozory* covering 100 houses each. The local police of the precincts was established by a decree issued by the Mayor of the Free City of Warsaw on May 16, 1794. Henceforth, it included a mayor as chairman and assessors in each precinct. See *Różne pisma z powstania kościuszkowskiego*, CAHR AKPOL, Ms. 257, card 178.

⁴⁶ *Zalecenie do wójtów względem przystawienia rekrutów*, CAHR LM, Ms. 110, card 45; AKU I, p. 34.

⁴⁷ *Druki obejmujące powstanie Tadeusza Kościuszki r. 1794*, CAHR, fonds no. 12, "The Popiel Collection", Ms. 374, card 26.

⁴⁸ *Konskrypcja ludności*, AKU I, p. 65.

⁴⁹ *Akta Rady Zastępczej Tymczasowej*, CAHR AKPOL, Ms. 290, card 38.

Order Commission of the Duchy of Mazovia requested the assistance of the Primate oblige the clergy in the various parishes to encourage the supply of recruits from the chimneys.⁵⁰

Let us, however, return to the issues of a *levée en masse*, which was proclaimed by the PC in the form of a decree on 4 May and constituted the main legal basis for this form of mobilisation in the Duchy of Mazovia until the SNC passed nationwide legislation on 6 June. In the light of the May resolution, all men between the ages of 15 and 50 were called up for service and were to be armed with spades and scythes according to a fixed model.⁵¹ It should be noted, however, that according to the resolution, "such armed forces of towns and villages shall have as their first intention the defence of their property and lives, or of the neighbouring areas".⁵² On 16 May, the Order Commission of the Cracow Voivodeship announced a proclamation containing provisions modifying earlier regulations on the number of recruits, stipulating that from now on the entire rural population obliged to serve in a *levée en masse* was to be divided into two equal parts, with half of communities being obliged to serve in the *levée en masse*, while the other half was to perform agricultural work. Such a solution was dictated, of course, by concern for agriculture and the land economy, by the fact that the rural population was to be detached from agricultural work for the purposes of the general mobilisation.⁵³

The first normative act during the 1794 Uprising, which codified the previous regulations concerning a *levée en masse* and the conscription of recruits in this form of supplying the armed forces⁵⁴ was a proclamation announced by the Supreme National Council in Warsaw on 6 June 1794,⁵⁵ which ordered the readiness of the common movement throughout the country. According to the provisions of this act, "out of five chimneys in towns, cities and villages, one young and healthy man with a weapon, i.e. a rifle and a few charges, or a pike 11 feet long or a scythe straight and an axe, is to be supplied as a recruit. He is to be dressed in the peasant way, as peasants commonly go in the villages, with

⁵⁰ *Akta Rady Zastępczej Tymczasowej pod naczelnictwem Kościuszki*, CAHR AKPOL, Ms. 241, card 35.

⁵¹ A. Skałkowski, *Legenda broni insurekcyjnej*, "Przegląd Warszawski" 1924, no. 38, pp. 14–166; W. Dziwanowski, *Zarys dziejów uzbrojenia w Polsce*, Warszawa 1935, p. 91. On the formation of the institution of a *levée en masse* in the Grand Duchy of Lithuania, see J. Kowecki, *op. cit.*, pp. 93–98.

⁵² *Ogłoszenie pospolitego ruszenia*, CAHR LM, Ms. 110, cards 162–166; AKU I, p. 108.

⁵³ M. Konarski, *Osobiste i rzeczowe...*, p. 15.

⁵⁴ J. Kowecki, *op. cit.*, p. 99.

⁵⁵ *Uniwersał, stosowny do odezwy Najwyższego siły zbrojnej narodowej Naczelnika, do obywateli Polski i Litwy względem wydawania rekrutów pieszych i konnych*, CAHR LM, Ms. 111, cards 132–136; *Akty powstania i inne pisma drukowane Rady Najwyższej*, CAHR AKPOL, Ms. 318, card 16; AKU I, pp. 267–269.

two shirts, good boots, a cap, a sheet, i.e. a thick sheet made of two pieces, and to be given biscuits for six days and a pay for one month, which makes 15 zlotys”.⁵⁶

In turn, a mounted recruit was to be supplied from every fiftieth house, whereby he had to own a horse worth 250 zlotys and be equipped with riding clothes himself, armed with a sabre, a pair of pistols and a pike. It was pointed out that the most suitable as mounted recruits were those residents who were able to sit on horses, i.e. equestrians or hunters, for example. Thanks to the use of the chimney expedition system, the army received men ready for battle, which meant that this unusually intensive conscription could produce, from the territory of the Republic remaining after the second partition, some 130,000 recruits, including 10,000 mounted recruits.⁵⁷

The sanctions for evasion of conscription were set out in the provisions promulgated by the SNC on 7 July 1794. According to these provisions: “(1) All citizens are obliged to report for a *levée en masse* according to the conditions and descriptions placed by the Council in the proclamation on 6 June, except only those who are exempted by the said proclamation; (2) Those who fail to do so will be liable to forfeit not only their property, but also any right to citizenship forever; (3) Persons travelling abroad during the uprising and playing in foreign countries without government information and permission will be subject to the same rigour; (4) Persons staying abroad should return to their homeland within 3 months at the latest and fulfil the above obligations under the same severe punishment”.⁵⁸

With regard to the aforementioned provisions, it should be mentioned that the individual chimneys that made up the canton recruit were obliged to deliver sheepskins in a number proportionally determined by the locally competent order commission. Those obliged to deliver sheepskins *in natura* who failed to meet the burden imposed could pay to the order commission twice the value of the sheepskin in the amount accepted in the locality. In the event of a refusal to deliver the sheepskin, the committee, assisted by the army, could enforce a fine against those failing to meet their obligation, although the manner in which this was to be done was not specified.⁵⁹ In the towns, in turn, depending on the classification and the number of chimneys from which the recruits were delivered, the inhabitants were also obliged to deliver two shirts free of charge and boots

⁵⁶ *Protokół rezolucji i innych czynności Rady Najwyższej Narodowej zapadłych od dnia 28 maja 1794 roku do 23 lipca tegoż roku*, CAHR LM, Ms. 111, card 135; *Akty powstania i inne pisma drukowane Rady Najwyższej*, CAHR AKPOL, Ms. 318, card 16; AKU I, p. 268.

⁵⁷ Z. Sułek, *op. cit.*, p. 246.

⁵⁸ *Uniwersał do obywateli, usuwających się od pospolitego ruszenia, kary na niesłusznych oznaczający*, CAHR AKPOL, Ms. 242, card 96; AKU I, pp. 413–414.

⁵⁹ *Przepis względem dostawienia kozuchów dla wojska*, CAHR LM, Ms. 112, cards 61–62; AKU II, p. 31.

and a coat for the same charge of 6 zlotys for a pair of boots and 10 zlotys for a coat. It was stipulated, however, that all those who, as a result of the provisions of 12 August, had already delivered boots and shirts, would be released from this obligation on a *pro rata* basis. On 12 August, the SNC issued a proclamation to the inhabitants of the capital and of all the lands and districts, containing an impassioned plea in a solemn, patriotic tone for the supply of shirts and boots for the army.⁶⁰ The very next day, the insurgent government issued another proclamation of this kind, demonstrating the urgency of meeting the needs in this area.⁶¹ However, let us return to the immediate issue of the regulations on the supply of recruits. The regulations of 6 June, cited above, were replaced on 18 September 1794 by more detailed ones, the issuance of which the SNC argued as follows: "When a hitherto used common army of peasants became less convenient for the purposes of general defence, and could be detrimental to the agricultural economy, therefore the Council, following the received recommendation of the Supreme Commander and his solicitude that the armed forces of the Republic be multiplied as conveniently as possible for its defence and as little as possible burdensome for the citizens, and be equally distributed among all citizens, resolves as follows."⁶²

This put an end to the institution of a *levée en masse*, replacing it with a system of the conscription of recruits.⁶³

Wherever recruits on foot or on horseback had not yet been delivered, the order commissions in the individual provinces and the municipal offices in towns were obliged to ensure their delivery without delay, while in the case of fugitive recruits and deserters from the national army, it was up to these authorities to detain them and return them to the nearest commands. In the latter situation, the authorities were to issue proclamations to the inhabitants ordering them to identify fugitives and deserters.⁶⁴

As a result of the replacement of the peasants' movement by a recruitment system, it was decided that out of the 10 chimneys in the towns, cities and villages previously accepted as a recruitment system, from now on "one young and

⁶⁰ *Odezwa do obywateli warszawskich i ziemiańskich o koszule i buty dla wojska*, CAHR AKPOL, Ms. 318, card 54; AKU II, p. 65.

⁶¹ *Odezwa do obywateli warszawskich i ziemiańskich względem dostawienia koców i siermiąg dla wojska*, CAHR AKPOL, Ms. 242, card 105; *ibidem*, Ms. 318, card 53; AKU II, p. 72.

⁶² *Urządzeniem względem przystawienia przez obywateli rekruta jednego z 10, a konia z 50 dymów u ekwipunkowanego (Ustawa Rady, na miejsce pospolitego ruszenia nowy rekrut konny i pieszy stanowiąca)*, CAHR LM, Ms. 112, cards 308–311; *Akta Rady Najwyższej Narodowej*, CAHR AKPOL, Ms. 242, card 120; AKU II, p. 171.

⁶³ J. Kowecki, *op. cit.*, pp. 261–263.

⁶⁴ *Akta Rady Najwyższej Narodowej*, CAHR AKPOL, Ms. 242, card 120; *Urządzeniem względem przystawienia przez obywateli rekruta...*, AKU II, pp. 171–172.

healthy man with a firearm, which the citizens will be able to afford, and in case of complete impossibility of supplying it with a pike or a scythe, with a good coat, sheepskin and cap, with a new pair of boot, a sheet, two shirts and biscuits for a few days”.⁶⁵ In turn, “a riding horse, fit, with a crutch one good” was to be supplied from 50 chimneys. The obligation to provide recruits and horses also extended to qahals and Jewish people in both towns and villages.

Ultimately, as a result of the shrinking area of the Uprising during this period, the September conscription proper could only provide about 20,000 troops, with it mainly covering the poorest rural and urban populations.⁶⁶ At the same time, intensive recruitment, as was usually the case in the course of inter-state military operations, met with passive resistance from the nobility, which often delayed the delivery of recruits, and if it did deliver them within the prescribed period, they were ill or crippled people.⁶⁷ This meant the final collapse of the mobilisation system through the forced conscription of recruits for the insurgent army.

Conclusions

To conclude this discussion, it is important to highlight some of the key issues that emerged from the analysis.

Conscription, the method of recruitment and the duration of military service have, since ancient times, constituted the most acute intangible burdens on the population bound to them. It suffices only to emphasise that the demands of everyday life are not usually able to reconcile the need to defend the State and its independence. Thus, the mobilisation of war reserves by means of compulsory military mobilisation by the relevant state authorities has never enjoyed high popularity for the sake of its severe consequences.

As I have said, the system of replenishment of the insurgent armed forces in 1794 took place both through the obligation to participate in a *levée en masse* and the obligation to provide recruits. Both methods of compulsory conscription were carried out through the organisational framework legally established by the insurgent authorities. It should be emphasised, however, that the irregular formations to which recruits coming from the forced conscription were sent constituted only a supplementary component of the insurgent armed forces alongside infantry, cavalry, artillery and engineering troops. This meant, for example, that a *levée en masse* was not the main military strike force, as they cooperated with

⁶⁵ *Ibidem.*

⁶⁶ Z. Sulek, *op. cit.*, p. 246.

⁶⁷ *Ibidem.*

the regular army, militia units and volunteers.⁶⁸ Its task was primarily to defend lands and *powiat* districts against smaller enemy divisions and to support regular divisions operating within enemy borders.⁶⁹

It has already been mentioned above that, during the Kościuszko Uprising, the massed troops included all able-bodied men from 18 to 40 years of age, and consisted of noblemen, peasants and burghers, armed mostly with scythes and pikes.⁷⁰ All estate owners were obliged to stand at the head of their communities together with manorial servants, while only female land owners, clergymen, the ill and the elderly were exempted from this obligation, but only on condition that 2 mounted deputies were supplied from each village to complete the regular units and militias.⁷¹

The *levée en masse*, used for armed demonstrations and covering operations, rendered considerable services, but generally failed in battles, as “incompetently commanded, poorly organised, armed and trained masses easily succumbed to panic and mostly fled the battlefield.”⁷²

There is no doubt that the units of the *levée en masse* were not able to fight the enemy in the open field, being vulnerable to enemy fire.⁷³ What is more, desertions and escapes were very frequent in the units of the *levée en masse*, although it is difficult to use the term “escape” in relation to these units; rather, the term “dispersal” should be used, which is obviously related to the fact that the *levée en masse* was called up for a certain period of time, after which they returned home, to their work on the farm, which no one could do for these people.⁷⁴

Finally, at the turn of October, however, the creation of a *levée en masse* was abandoned in view of its low military value, the poor state of agriculture due to

⁶⁸ CCf. the statement by J. Kowecki in discussion of the paper by T. Rawski, *Polska wojna rewolucyjna 1794 roku na tle wojen XVIII wieku*, [in:] *VIII Powszechny Zjazd Historyków Polskich w Krakowie 14–17 września 1958. Referaty i dyskusja*, vol. 8: *Historia wojskowości*, ed. S. Okęcki, Warszawa 1960, p. 141, where this author points out that the commanders of the *levée en masse* constantly demanded this cooperation, but that in practice this was not always the case and they could not always count on the assistance of the other strike forces.

⁶⁹ *Ibidem*, p. 148.

⁷⁰ J. Wojtasik, *Uzbrojenie a sztuka wojenna w polskich powstaniach narodowych lat 1794–1864*, “*Studia i Materiały do Historii Wojskowości*” 1979, vol. 22, pp. 158–161.

⁷¹ T. Rawski, *op. cit.*, p. 148; E. Kozłowski, M. Wrzosek, *Dzieje oręża polskiego 1794–1938*, Warszawa 1973, pp. 13–14.

⁷² T. Sułek, *op. cit.*, p. 249; T. Rawski, *op. cit.*, pp. 146–147, 150–151.

⁷³ S. Herbst, *Walki na pograniczu Mazowsza i Podlasia w czerwcu i lipcu 1794 roku*, “*Przegląd Historyczny*” 1958, vol. 49(2), pp. 221–235.

⁷⁴ T. Korzon, *Wewnętrzne dzieje Polski za Stanisława Augusta (1764–1794)*, vol. 1, Kraków–Warszawa 1897, p. 478; S. Herbst, *Początki polskiej wojny rewolucyjnej 1794 r.*, “*Studia i Materiały do dziejów Wojskowości*” 1967, vol. 13(2), p. 32; R. Orłowski, *Z dziejów materialnego poparcia powstania kościuszkowskiego w Lubelskiem*, “*Rocznik Lubelski*” 1967, vol. 10, pp. 175–178.

a shortage of labour force and the increasing resistance of the nobility, unwilling to arm peasant masses and deplete the serfs' labour force.⁷⁵

In the declining period of the Uprising, on the other hand, the compulsory recruits to be supplied by the order commissions from 10 chimneys instead of the *levée en masse* did not increase the combat value of the insurgent army either.

All the mobilisation measures mentioned above were intended to enable the expansion of the insurgent regular army to 100,000, which was to be achieved by supplementing it with irregular troops drawn from conscription on a scale never seen before. Mobilisation itself was slow outside Warsaw, and some parts of the country lagged behind in the issuing of recruits to such an extent that sometimes conscription was carried out at a rate of a dozen or so per cent at most. As an exception to this rule, one can cite the example of the Lublin Voivodeship, where conscription was achieved in 90%, thus, winning the approval of the government in Warsaw.

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⁷⁵ *Dziennik Rady Najwyższej Narodowej. Sesja 126, AKU II*, p. 439. Cf. Z. Sułek, *op. cit.*, p. 249.

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Abstract: The discussion related to the compulsory recruitment of recruits into the ranks of irregular formations of the insurgent army in 1794 have been analysed from the point of view of the history of substantive administrative law, and more specifically the formation of burdens and contributions for defence. The mobilisation system under study was of a dual nature, i.e. it was based both on a sanctioned obligation to participate in a *levée en masse*, i.e. to appear with arms at the request of the insurgent authorities in order to defend against the enemy, and in the subsequent stages of the uprising on the obligation to deliver recruits fulfilling certain characteristics by relevant bodies of the territorial insurgent administration. The article focuses on the insurrectionary legislation in the aforementioned scope, including the organisation of the system of compulsory recruitment and the practice of applying particular normative provisions against the background of the social and military situation in the country at that time.

Keywords: administrative law; military conscription; recruit; *levée en masse*; Kościuszek

Abstrakt: Dociekania związane z przymusowym poborem rekruta w szeregi formacji nieregularnych armii powstańczej w 1794 r. zostały poddane analizie z punktu widzenia historii materialnego prawa administracyjnego, a ściślej rzecz ujmując, kształtowania się ciężarów i świadczeń na rzecz obrony. Będący przedmiotem badań system mobilizacyjny miał charakter dualny, tzn. opierał się na usankcjonowanym przymusie udziału w pospolitym ruszeniu, czyli stawieniu się pod broń na zarządzenie władz powstańczych w celu obrony przed nieprzyjacielem, a w kolejnych etapach powstania na przymusie dostarczenia przez właściwe organy terytorialnej administracji powstańczej spełniającego określone cechy rekruta. Rozważania koncentrują się na prawodawstwie powstańczym w powyższym zakresie, w tym na organizacji systemu przymusowego poboru rekruta oraz na praktyce stosowania poszczególnych postanowień normatywnych na tle ówczesnej sytuacji społecznej oraz militarnej kraju.

Słowa kluczowe: prawo administracyjne; pobór wojskowy; rekrut; pospolite ruszenie; Kościuszek