

The Activity of the Judge Pelikšas Bugailiškis: Between law and ethnography. Findings of the Šiauliai District Court Criminal Cases of the Lithuania Interwar Period*

Abstract

The aim of this paper is to present the reflections on the professional activity of Pelikšas Bugailiškis (1883-1965), a unique figure in Lithuanian history. In particular, the author attempts to briefly present Bugailiškis's path to the position of judge and his liberal ideas on the introduction of suspended sentences into Lithuanian criminal law, based on the 1903 adaptation of the Criminal Code of the Russian Empire. During the inter-war period, while working as a judge, Bugailiškis was also an active member of society and local culture, sharing his passion for Lithuanian ethnology and museology. The surviving documentation about Bugailiškis provided an interesting moral approach to trace his views on criminal offences and their links with traditional transgressions. The author argues that despite the ethnological nature of the research campaigns initiated by Bugailiškis, they are also relevant to the field of criminology and social policy in inter-war Lithuania. In this context, the paper is useful in revealing the broader issues of society's negative attitudes towards abortion or the birth of an illegitimate child, which should have been addressed by the Lithuanian legal system.

KEYWORDS: interwar Lithuania, criminal code, moral transgressions, lithuanian ethnology

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Image of Bugailiškis Pelikšas in 1936. Kupiškis ethnography museum, Lithuania. https://www.europeana.eu/item/2024906/photography_ProvidedCHO_Kupi_kio_etnografijos_muziejus___Kupi_kis_Ethnographic_Museum_LIMIS_52183074.

The judicial history of the State of Lithuania, which has restored its independence in 1918, is inseparable from public figures and political actors, influenced by the ideals of the democratic system, social cohesion, and Lithuanian nationalism. The expectations of the liberalizing post-war society contrasted with the previously inherited set of legal norms of the Russian Empire. One of the figures who made his mark in this transitional period of inter-war Lithuania was the judge Pelikšas Bugailiškis.

Bugailiškis' most productive years coincide with the period of independent Lithuania. From December 1918, he served at the local Šiauliai court and since the establishment of Šiauliai District Court in 1922, he worked there as a judge in Civil and Criminal Cases' divisions, until November 1939, when he was transferred to the newly established Vilnius District Court of the Republic of Lithuania and briefly holding the position of chairman until the Soviet occupation in June 1940.^[1]

The fascinating detail regarding Bugailiškis' legacy^[2] is that he is significantly more known currently in Lithuania in the field of the culture, the press, the local politics, the ethnography, the museology rather than serving as a judge.^[3] He initiated the establishment of the "Aušra" ethnographic museum in Šiauliai in 1923, was one of the founders the society of Šiauliai local history, which has collected various items and issued periodical journals. Bugailiškis has written approximately 300 articles on the several topics.^[4] The article that has the most relevancy to this juridical topic and

¹ Alfredas Vilbikas, *Šiaulių apygardos teismų istorija (1915-1945 ir 1990-2006)* (Šiauliai: Saulės spaustuvė, 2007), 256-257.

² Vacys Milius, "Pelikšas Bugailiškis" *Visuotinė lietuvių enciklopedija* (Universal Lithuanian Encyclopedia), Vol. III (Vilnius: Mokslo ir enciklopedijų leidybos institutas, 2003), 569-570.

³ The first published biographical book about Bugailiškis' life did not provided details about his judicial work, see more Vyginas Bronius Pšibilskis, *Pelikšas Bugailiškis: Gyvenimo vieškeliais* (Vilnius: Kultūros ir švietimo m-jos leidybos centras, 1994). The aspects of the judge's activity were described in the form of internet articles by Jonas Nekrašius and Alfredas Vilbikas, see more: Jonas Nekrašius, *Pelikšas Bugailiškis – advokatas, teisėjas, muziejininkas ir spaudos darbuotojas*, 20 December 2018. <https://www.snaujienos.lt/kultura-ir-pramogos/39086-peliksas-bugailiškis-advokatas-teisejas-muziejininkas-ir-spaudos-darbuotojas.html>. Alfredas Vilbikas, *Pelikšui Bugailiškiui ir jo veiklai atminti*, 10 March 2024. <https://www.skrastas.lt/atolankos/pelikšui-bugailiškiui-ir-jo-veiklai-atminti>.

⁴ Vyginas Bronius Pšibilskis, *Pelikšas Bugailiškis: Gyvenimo vieškeliais* (Vilnius: Kultūros ir švietimo m-jos leidybos centras, 1994), 443-459.

inspired to carry out this research, was about Lithuanian countryside moral transgressions and penal customs, written by Bugailiškis in 1938.^[5]

The activity and role of Bugailiškis in this research paper will be presented in the following three areas:

1. to specify the importance of Bugailiškis' role in the Šiauliai District Court and his public ideas concerning the Criminal Code of Lithuania.
2. to find the traces of the judge's approach regarding the criminal cases in the Šiauliai District Court.
3. to define the mindset of Bugailiškis, interpreting his insights about local penal customs and its implications for the official law.

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Peliksas Bugailiškis was born in Juodžiūnai village in 1883 in Ukmergė County (at that time named Vilkomir Uyezd in Russian). In 1902 after graduating from the Liepāja Gymnasium, Bugailiškis with the help of his cousin, entered the Faculty of Natural Sciences at Saint Petersburg University, then studied civil law at the Faculty of Law, but quit the studies in 1905. While studying in the capital of the Russian Empire, he was actively involved in press publishing, writing articles for the first legal Lithuanian language newspaper "Lietuvių laikraštis," issued in 1904 in Saint Petersburg. Bugailiškis has expanded his circle of connections in Saint Petersburg with the Lithuanian diaspora and freethinkers. In 1907 and 1908 Bugailiškis was the secretary of the third Russian State Duma members Ignotas Požėla, Pranas Keinys, Andrius Bulota. In 1909 after successful jurist exam graduation in Moscow, Bugailiškis has returned to Šiauliai city, and until the First World War he worked as an assistant to the lawyer Stanislovas Lukauskas and became more actively involved in the local political activities. During the German occupation, Bugailiškis worked as a defense lawyer at the local court.

The restored state of Lithuania faced crucial challenges of defending itself from the external and internal threats, so there was an urgent need to officially establish the foundations of civil and criminal law and the court system itself. In 1918 the Council of State, called Lietuvos Taryba, had considered and lately had rejected the idea of creating an amalgamation of

⁵ Peliksas Bugailiškis, "Šis tas apie mūsų dorovinių prasižengimų baudžiamuosius papročius" *Gimtasai kraštas*, nr. 1-2 (1938): 265-267. <https://www.epaveldas.lt/preview?id=LNBo695CA8E-1938-Nr.17-18>.

national civil and penal laws based on the historical Statutes of Lithuania and other legal acts valid in Lithuania prior the war. Law experts recommended to the members of the Council of the State to adopt the legal norms of the Russian Empire, if they did not conflict with the Independence Act and other laws of the Republic, while hoping to prepare the construction of the original Lithuanian laws in the future.^[6] On 28 November 1918, a Temporary Law on the Organization of Lithuanian Courts and Their Operation was issued and legitimized the mixed adoption of the Russian laws. The Law stipulated the usage of Russian Criminal Code of 1903, locally called Tagantsev Code, with several corrections of articles regarding the punishments. This document remained in force until 1940, despite the efforts to update the criminal law according to the examples of the Western European countries.

Bugailiškis rose to the top of the Lithuanian judges quite quickly, considering the country's extreme lack of lawyers and judges in 1920's due to the reason that certain individuals were appointed to these positions, even though they did not speak Lithuanian language well, and shared only a common knowledge of the 1903 Criminal Code,^[7] unlike Bugailiškis.

From December 1918 to July 1922, Bugailiškis was the first justice of the peace in Šiauliai and published his memoirs about the start of his office.^[8] The Founding Parliament of Lithuania passed a law in 1922 to establish an independent Šiauliai District Court, separating it from the jurisdiction of the Kaunas District Court.^[9] This change became an opportunity for Bugailiškis to occupy a higher position. In 1922, he was appointed vice-chairman of the Šiauliai District Court, from 1923 he regularly worked as a judge of the Court in Civil and Criminal divisions, and from 1933 to 1939 he was served as the chairman of the Civil Division.

As previously mentioned, the appointment of Bugailiškis to the position of chairman of the newly established Vilnius District Court was short-lived, because during the first months of Soviet occupation he decided to return

⁶ Mindaugas Maksimaitis, "Rusijos teisės šaltiniai Lietuvoje 1918–1940 m. [*Sources of the Russian law in Lithuania during 1918–1940*]" *Jurisprudencija*, No. 2 (2012): 405–407. <https://www.lituanistika.lt/content/39288>.

⁷ Alfredas Vilbikas, *Teismai ir teisėjai Lietuvoje (1918–2018)* (Kaunas: Eurispaulda, 2018), 29–30.

⁸ Pelikšas Bugailiškis, "Teisingumo dirvonus plėšiant" *Teisė*, No. 13 (1928): 44–48. <https://www.epaveldas.lt/preview?id=LNBo1351CF1-1928-Nr.13>.

⁹ Alfredas Vilbikas, *Šiaulių apygardos teismų istorija (1915–1945 ir 1990–2006)* (Šiauliai: Saulės spaustuvė, 2007), 256.

to Šiauliai city and, curiously, he was allowed to work officially as a chairman of the Civil Division of the Šiauliai District Court from August of the same year.^[10] During the first Soviet occupation, unlike his counterparts, he avoided the fate of deportation probably to the personal connections he gained previously. The last phase of Bugailiškis's life, during the second Soviet occupation was connected only with the field of ethnography in order to preserve objects of Lithuanian cultural and literary heritage.

Bugailiškis' contribution to the ideas on how to improve the status of criminal law in Lithuania has not been properly evaluated, probably because he was more active and respected in the civil law area. Bugailiškis was the first who published an article in 1924 discussing the need to establish the concept of the suspended sentence in Lithuania. These ideas have been presented in the popular journal "Lietuvos žinios", explaining the causes of the stagnant work of the courts and providing the possible solutions.^[11] In this article, Bugailiškis raised two problematic questions of an institutional nature. Firstly, he presented the scope of the slow examination of cases, some lasting even four years without a verdict. Such a situation contradicted Cesare Beccaria's principle, which remained influential among Lithuanian lawyers at the time, that only quick punishment determines the effectiveness of the crime deterrence.^[12] Secondly, the decrease of members of the court staff only worsened the situation and promoted public distrust in the court system in Lithuania.

According to Bugailiškis, the adopted Criminal Code of the Russian Empire no longer satisfied the needs of society and the state because it does not provide for a parole mechanism. Suspended sentences are necessary for a young country as means of faster sanctioning of criminals and avoiding the prisons being severely overcrowded, claimed Bugailiškis while crediting prison as "a school for criminals." The prison served as a dangerous environment for juveniles, who didn't even have their own detention centre. The inappropriate penitentiary environment only radicalized the inmates. On the contrary, the suspended sentence was meant to fulfil the function of a merciful court and prevent from the incentives of recidivism. A strong legal foundation must have been the Lithuania's priority, Bugailiškis summarized.

¹⁰ Vilbikas, Alfredas. *Šiaulių apygardos teismų istorija*, 257.

¹¹ Peliksas Bugailiškis, "Teismų sutvarkymo reikalu" *Lietuvos žinios*, No. 192 (1924): 1-2. <https://www.epaveldas.lt/preview?id=C1B0003192409-1924-Rugpj.27>.

¹² Cesare Beccaria, *Apie nusikaltimus ir bausmes* (Kaunas: Spindulys, 1935), 43-45.

Paradoxically, such a law was adopted in Lithuania in 1928, after the authoritarian regime of Antanas Smetona established its power. Until then, the release of certain criminals from prison or before the trial was supported by separate Amnesty laws. The Suspended sentence law of 1928 has been widely used by the courts in cases where the defendants have been prosecuted for the first time and have confessed to the crimes they had committed.^[13]

The new law was applied to many women who were convicted of self-induced abortion or infanticide. Although the latter was a mass phenomenon in rural and urban Lithuania after the First World War and attracted press attention, it was strictly criminalised.^[14]

As mentioned above, due to the lack of specialized criminal law judges in Lithuania and the characteristics of Bugailiškis' erudition, he had to participate as a member of a panel of judges in criminal cases. The available archived documents allow to detect a tendency that the presence of Bugailiškis in the panel has led to longer and more detailed motivational part in the final judgments.^[15] The purpose of the court protocol paper was not intended to briefly specify the accusation and the final judgment – it tried to explain the state of the person during the execution of the crime and at the trial. In this case, the relationship between the objective and subjective aspects could be highlighted, with the court arguing why a less severe sentence would have been appropriate in the case of the defendant.

Women who were prosecuted for self-induced abortions are described in Šiauliai District Court documents with some empathy, without denying their objective culpability under the existing Criminal Code. The saying “public opinion” (*viešoji opinija* in Lithuanian) was not recorded just as a short phrase, indicating the motive of the women to terminate their pregnancy. Unlike in similar cases in other courts, the motivational part explains how this “public opinion” exactly affected the women, who usually had poor social status, had no assets, were looking for a temporary job in an environment alien to their, had unfinished primary education or were

¹³ Vytautas Andriulis, *Nusikaltimų prevencijos patirtis Lietuvoje 1918–1940 m.* (Vilnius: Justitia, 2000), 12–13.

¹⁴ Inga Daukšaitė, “Baudžiamųjų įstatymų, reglamentavusių atsakomybę už neteisėtą abortą Lietuvoje, raida [*Development of criminal laws regulating liability for illegal abortion in Lithuania*]” *Teisė*, No. 96 (2015): 29–32. <https://www.lituanistika.lt/content/63447>.

¹⁵ Documents from interwar Šiauliai District Court are currently stored in the Lithuanian Central State Archives in Vilnius and constitutes Fond no. 488.

illiterate. With such a social background, the young women were more vulnerable in their workplace, which was their only source of their livelihood. Pregnancy not only physically limited their ability to do a regular job, but also provoked bullying from others due to their changing body shape. The illegitimate origin of the baby was met with condemnation by most of the society.^[16]

Bugailiškis seems to have understood these aspects and treated the abortion as a symptom of a larger social problem, that vulnerable members of society remain alone with their life challenges and are rejected by other members of the society. For a long time, the state of Lithuania had no social guarantees for pregnant women, and having children was not the only a problem for the outcasts of society or the poor.

Prominent Lithuanian doctor, obstetrician Pranas Mažylis (1885–1966), while examining the problem of the prevalence of abortions, also pointed out that females employed in local government institutions were inclined to terminate their pregnancy because they could not take a longer maternity leave and did not have the conditions to feed the baby at their workplaces.^[17] Pregnancy was seen as an obstacle to a woman's career and kept her in the narrow role of mother and housewife. In fact, polemics about abortion and infant killing were common throughout the period of the independent Lithuania in the medical,^[18] legal,^[19] and Catholic moral philosophy press.^[20]

What can be revealed additionally about Bugailiškis' focus on Lithuanian traditional customs and moral transgressions, related to his dual interest in the ethnography and the law? The Šiauliai branch of the Lithuanian Society of Lawyers initiated a questionnaire on these issues and sent out 60 questionnaires to respondents who worked in the countryside and had interest in local history. The magazine "Gimtasai kraštas" (Native Land) published in 1938 the preliminary results of the questionnaires in the form

¹⁶ Miglė Mataitytė, "Abortų problema Lietuvoje 1919–1940 metais [*The problem of abortions in Lithuania in 1919–1940: between law and morality*]" *Kauno istorijos metraštis*, No. 17 (2019): 184–186. <https://doi.org/10.7220/2335-8734.17.10>.

¹⁷ Pranas Mažylis, *Lecture synopsis about abortion for medicine students*. Manuscript (circa 1928). Archive of Manuscripts Division of Vilnius University, Fond No. 92, Folder No. 9, Files 1 – 8.

¹⁸ Toby Goldbergas, "Mūsų įstatymai ir mediciniškasis abortas" *Medicina*, No. 9(1929): 609–620. <https://www.epaveldas.lt/preview?id=LNBoo2D131A-1929-Nr.9>.

¹⁹ A. Vaitiekavičius, "Abortai ir kova su jais" *Teisė*, No. 30 (1935): 161–162.

²⁰ Stanislovas Gruodis, *Negimusios gyvybės panaikinimas* (Kaunas: Šviesa, 1935), 83–92.

of an article.^[21] Unfortunately, the original letters of the questionnaires have disappeared, and it remains partially unknown what exactly questions were formulated to the respondents, but it is possible to reconstruct most of them based on this Bugailiškis' article.

The first part of his article describes illegitimate children, usually called "pavainikis vaikas". The questionnaire revealed that the phrase "benkartas" used in the Statutes of Lithuania has survived to the present day. In Sudovia region, bordering on East Prussia, the locals used the phrase "bastardas" or "batriukas", people from Dzūkija region used the Slavic origin word "samaradas", the respondents from other locations answered that the epithets to call illegitimate children were related to an element of secrecy or an accident.

Sexual intercourse or promiscuous behaviour by unmarried people was treated as a serious offence by local communities. Often, unmarried girls with a child were taken to public ridicule near the church, but were not allowed to enter. They were spat on, shamed with words, and in rare cases even tied to the so-called "Pillars of Shame" or church doors. Bugailiškis describes in detail how the girls were made to publicly repent in front of other people. Elements of physical torture, such as flogging or digging pits, are also described.

In this way, the local community was demonstrating to its other members what would happen to them if they committed moral transgressions. Bugailiškis noted that the severity of the punishment could be compared to the punishment of horse thieves who were hanged or thieves who were publicly beaten. Bugailiškis concluded that the field of customary punishments had not been studied by the representatives of criminology, therefore every phenomenon described was significant.

Having completed the analysis of the above-mentioned article by Bugailiškis, it is difficult to assess whether the answers to the questionnaire provided any new facts, points of view on the subject under discussion, except for the mention of the use of locking devices in churches. The structure of the text characterizes that Bugailiškis was familiar with the punishments that the villagers applied to women, who gave birth to an

²¹ Pelikšas Bugailiškis, "Šis tas apie mūsų dorovinių prasižengimų baudžiamuosius papročius" *Gimtasai kraštas*, No. 1-2 (1938): 265-267. <https://www.epaveldas.lt/preview?id=LNBo695CA8E-1938-Nr.17-18>.

illegitimate child, and what kind of impression or stigma this might have left on the other members of the local community.^[22]

Fortunately, in 1938 the magazine “Gimtasai kraštas” had published another publication related to the questionnaire, which collected data only from the region of Samogitia.^[23] It also indicated the community’s treatment of women who were giving births to the illegitimate children, described the epithets of children, and forms of the punishment. Strict customary punishments acted as a deterrent to the unwanted pregnancy. The article mentions punishments for men who had extramarital sexual relations with hired workers in rural Samogitia, which suggests that the public’s perspective to the informal relationships may have become more lenient in the 1930’s.

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The episodes of Bugailiškis’ life, related to his activities as a judge and the investigation of traditional moral transgressions, are not sufficiently described in current Lithuanian historiography. This study attempts to argue that the biography of an inter-war Lithuanian judge reveals a wider context about the socio-cultural changes taking place in his working environment and in the Republic of Lithuania at that time. Bugailiškis himself had the opportunity to record the public’s attitude towards criminal offences and the people who were brought before the courts.

Bugailiškis work in the Court and in the “Aušra” Museum, as well in the organizations of lawyers and local historians, allows us to see what a unique personality he was. Bugailiškis wanted to deeply understand the reasons that determined certain social norms and the behaviour of convicted persons. Bugailiškis hoped that the court would not become an institution that punishes transgressed persons by putting them in the harsh and radical prison environment. The trial and suspended sentence was supposed to be an experience that should enable an individual to understand the consequences of his actions and become a decent citizen of the Republic.

²² Angelė Vyšniauskaitė, Petras Kalnius, Rasa Paukštytė-Šaknienė, *Lietuvių šeima ir papročiai*. 2nd ed. (Vilnius: Mintis, 2009), 451-454.

²³ Juozas Mickevičius, “Apie dorovinių nusižengimų baudimus Žemaičiuose” *Gimtasai kraštas*, No. 3-4 (1938): 412-414. <https://www.epaveldas.lt/preview?id=L-NB0695CA8E-1938-Nr.19-20>.

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