

# PEN NORWAY

## Turkey Elections: What Does the Future Hold for Freedom of Speech?

PEN Norway's Interview with **Bülent Kaya**,  
Legal Affairs Chairman of the Saadet Party

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Since 2020, as part of the Turkey Indictment Project, PEN Norway has examined 25 separate indictments focused on freedom of expression in Turkey and has produced reports on these indictments in cooperation with expert lawyers from different European countries. The PEN Norway Turkey Indictment Project reports of 2020 and 2021 revealed that every one of the 25 indictments in question failed to comply with Turkey's domestic legal provisions and also international provisions and contracts such as the European Convention on Human Rights and the UN Guidelines for prosecutors.

PEN Norway's in-person, recent, observations of such trials as the Gezi Park trial, the We Will Stop Femicide Platform case and trials of Turkey's chief physician Prof. Dr Şebnem Korur Fincancı, activist Pınar Selek and journalist Sedef Kabaş all demonstrate the lack of independence of the judiciary as well as serious fundamental flaws in the preparation of indictments.

Historic elections take place in Turkey on May 14th, 2023, in which the candidates for both the President and Turkey's Parliament will be determined. A month before the elections PEN Norway's Turkey Adviser travelled to Istanbul to interview representatives of the major political parties to question them about issues such as freedom of expression, the freedom of the press, the rule of law, and the right to a fair trial in Turkey.

As part of this interview series, we conducted face-to-face and written interviews with the following:

- Dr. Canan Kaftancıoğlu, the Istanbul Regional Chair of the Republican People's Party (CHP),
- Lawyer Züleyha Gülüm, Istanbul's MP for the People's Democratic Party (HDP),
- Former journalist and now MP for the Worker's Party (TİP) Ahmet Şık,
- Lawyer Bahadır Erdem, Vice Chair of the İyi Party,
- Bülent Turan, Vice Chair of the Justice and Development Party (AKP),
- Selahattin Demirtaş, imprisoned former co-chair of the People's Democratic Party (HDP),
- Serhan Yücel, Secretary-General of the Democrat Party,
- Mustafa Yeneroğlu, Justice and Legal Affairs Policy Chairman of the Democracy and Progress Party (DEVA),
- Muharrem Erkek, Vice President of the Republican People's Party (CHP)
- Zeynep Esmeray Özadikti, candidate for MP from Turkey's Worker Party (TİP)
- Bülent Kaya, Legal Affairs Chairman of the Saadet Party.

None of the content of the interviews has been altered by PEN Norway, the views expressed are those of the individual politicians.

We hope that these historic elections in Turkey will be instrumental in strengthening fundamental rights and freedoms for all.

*Caroline Stockford, Turkey Adviser, PEN Norway*  
*Şerife Ceren Uysal, Legal Adviser on Turkey, PEN Norway*

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**Laws on social media such as the Disinformation Law in Turkey have created a new environment where freedom of expression faces significant limitations. Likewise, trials against journalists have become systematic. How do you see the situation of freedom of expression and freedom of the press in Turkey at present?**

We believe that there are several problematic areas regarding freedom of opinion and expression in Turkey. The provisions within the current legislation that contain vague statements and do not define the offense but could be interpreted against freedoms, and the provisions that restrict freedom of opinion and expression are of course the most critical of these problems. Another most important problem is the problems of implementation. Due to the lack of judicial independence, judges may sometimes come under the influence of the political atmosphere. Moreover, judges may feel under pressure as the government becomes more authoritarian. Another problem is the lack of in-service training for judges.

All these problematic areas cause incidents where freedom of expression and freedom of the press are restricted in Turkey.

**What do you think about the ongoing trials on freedom of expression and freedom of the press, the judgements of the European Court of Human Rights that have already been rendered but remain unimplemented? What steps you think should be taken?**

Another set of serious violations in the field of freedom of opinion, expression and the press is caused by the issues of non-implementation of judgements, which are the most important of the problematic areas I have mentioned above. Unfortunately, some judgements are delivered in a certain way due to political conjecture and the failure of some highly politicised members of the judiciary to take a perspective on the issue in line with domestic legislation, universal jurisprudence and the standards required by international conventions to which Turkey is a party. We regret to see the courts convict based upon some statements that fall within the boundaries of freedom of opinion and expression and that could have been classified as heavy criticism or shocking criticism with a degree of political discomfort as a consequence at worst. The problem will begin to be solved as soon as the political powers cease to suppress the judiciary, ensure its independence and introduce legislation that makes a better and clear-cut definition of the offence that is in accordance with the principle of legality.



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**Many provisions in the Penal Code, such as the offence of insulting the President, pose a significant impediment to freedom of expression. What do you think should be done in this regard, what should change?**

Our criminal legislation should quickly be updated to conform with the universal principles, international conventions to which we are a party, and the direction of development of freedom of opinion and expression. It is imperative to swiftly pass legislative arrangements to ensure that the elements and boundaries of the offense are as specific as possible and in line with universal principles.

**The judiciary is supposed to act as one of the fundamental guarantees of freedom of expression. It is observed, however, that this is not the way it works in Turkey. Since 2020, we have been conducting the Turkey Indictment Project and as part of it we have analysed and drafted reports about 25 indictments where we found that in all of them the prosecutors failed to fulfil their obligation to protect freedom of expression. What are your projects in relation to the judiciary? Are there any plans to start a comprehensive in-house human rights training programme?**

We have emphasised this in our Memorandum of Understanding on Strengthened Parliamentary System which takes the separation of powers as its basis, and to put our proposals in the memorandum in practice, a significant part of our Constitutional Amendment Proposal is devoted to the Independence of the Judiciary. Here, we proposed amendments to 84 articles of the Constitution. In this context and in order to protect the principle of separation of powers, we have proposed numerous critical regulations from separating the judiciary from the executive and making it independent to increasing the opportunities granted to the judiciary, reorganisation of legal education and provision of in-service training of judges. In this sense, a series of important gains will be made through the changes in the structure of the High Council of Judges and Prosecutors and the recognition of judges' security of tenure, especially of geographical kind.

**After 14 May, provided that the Nation Alliance is successful, what impact do you think this will have on freedom of expression and freedom of the press?**

The success of the National Alliance will first transform the oppressive climate in the country and everyone will breathe a sigh of relief. The National Alliance deeply cares about the independence of the judiciary and believes that without law and democracy we cannot create the conditions for the development of a country, the improvement of its economy, and for a decent life. We have come together around these beliefs and our success will start by changing the climate of the country from the very first day. Then, we will start to see the implementation of the legal and constitutional regulations and administrative measures and initiatives that we promised to the nation and that will help remove the barriers to freedom of expression and the press. As in many other areas, the National Alliance is determined to ensure freedom of opinion and expression and the freedom of the press, which is the guarantee of the nation's right to information. ■

## Bülent Kaya

Lawyer Bülent Kaya, who is the head of legal affairs at Saadet Party, was born in Diyarbakır in 1973. He graduated from Istanbul University's Faculty of Law. He is currently a freelance lawyer and legal consultant. Kaya has held various positions in the Saadet Party, Anatolian Youth Association and in the Foundation for Science, Culture and Education. In the 2018 General Elections, he was the 2nd placed parliamentary candidate of Saadet Party in Diyarbakır. In the 14 May elections, he is among the deputy candidates of the National Alliance.