

**P E N
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Turkey Elections:
What Does the Future Hold
for Freedom of Speech?

**PEN Norway's Interview with
Muharrem Erkek, Vice President of the
Republican People's Party (CHP)**

Published: 3 May 2023

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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

PEN Norway's Interview with Muharrem Erkek, Vice President of the Republican People's Party (CHP)

In the run up to elections in Turkey, your party, the People's Republican Party (CHP) is one of the most important components of the Six-Party alliance. Your leader Mr. Kılıçdaroğlu is the also the alliance's Presidential candidate. We read the joint memorandum of the National alliance and we are aware that in Turkey a number of common criticisms have been raised regarding the current state of the judiciary and the exercise of rights and freedoms. We would very much like to know the plans of your party and the alliance in that regard. Could you share with us your opinions on the situation in Turkey and the concrete steps you think should be taken for improvement in these areas?

We have been working together as six parties for about a year and a half, and we eventually published three different statements where we explained the actions we will take. The first statement is the Memorandum of Understanding on a Strengthened Parliamentary System, which is the basis of all our common policies. The statement's essential feature is its capacity to offer solutions, not solely in regards to the Strengthened Parliamentary System or the legislature-executive relations, but also in relation to Turkey's problems in general. We have provided our list of alternatives on fundamental rights and freedoms, public administration, merit-based approaches and ethics. Then based on this, we focused on how to make a Constitutional Amendment. Drawing on a strong consensus and extensive consultation, we drafted a Constitutional Amendment and the constitutional provisions of this amendment on which a Strengthened Parliamentary System will be built. As you know, we released the first statement on 28 February 2022 and the second on 28 November 2022. Then we publicly put forward the Memorandum of Understanding on Common Policies, which is the government programme of our Presidential candidate. It contains our proposals for solutions to each and every problem in Turkey. Of course, the judiciary is at the forefront of these. The impartiality and independence of the judiciary were undermined together with any possibility for restoration by the Constitutional Amendment Referendum in 2017. And under such a one-man regime, the first things to be sacrificed once the judiciary is undermined are fundamental rights and freedoms. At the moment, we live in a country where there is no democratic rule of law but instead there is the reign of arbitrary rule. The Presidential Government System, with a President who is also a member of a political party, undermined the independence and impartiality of the judiciary. With his direct and indirect powers to appoint the members of the Council of Judges and Prosecutors (HSK), the President brought the Council under the control of the executive. Besides the Memorandum of Understanding on Common Policies on the judiciary and fundamental rights and freedoms, our first statement addresses certain serious problems and proposes suggestions on how to solve them. To give some examples;



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- Aside from constitutional and legal adjustments, a series of structural changes will be introduced to implement the independence of judiciary.
- Judicial tenure will be strengthened, and the judges will be given geographical guarantees.
- The activities of judges and those of prosecutors shall be separated from each other in order to ensure full independence.
- The constitutional provision stating that judges are affiliated with the Ministry of Justice in terms of their administrative duties shall be abolished.
- A transition between the positions of judges and prosecutors shall be possible only with the consent of the person concerned.
- A Judicial law enforcement organization shall be established under the Office of the Chief Public Prosecutor.
- The admission into the profession and promotion of judges and prosecutors shall be based on objective criteria.
- Specialised trial procedures and specialised courts (those assigned to specific crimes) shall be abolished.
- In accordance with the requirements of the rule of law, the Offices of Judges of Peace will be restructured in terms of their duties, authorities and the way they operate.
- The necessary measures shall be taken to meticulously enforce the principle of detention as an exception, that is to say that pre-trial detention shall be minimised.
- To enhance the quality of legal education, the number of law faculties shall be reduced, and comprehensive improvements will be made regarding the academic staff and curricula.
- The principle of “equality of arms” will be applied in all stages of the trial, including the layout of the courtrooms and in terms of the equality of rights between the prosecution and the defence.
- The implementation of the judgments of the European Court of Human Rights and the Constitutional Court is one of the most important requirements of the rule of law and the supremacy of the constitution. Failure to implement these judgments or delaying their implementation poses serious problems in terms of legal security. Therefore, arrangements shall be made to ensure that judgments of the lower courts are adopted in line with the Constitutional Court and the European Court of Human Rights case law and that the judgments made by these court are immediately implemented.
- To ensure that judges act carefully in making their judgments, one of the fundamental criteria for the promotion of judges shall be the compliance of their decisions with the Constitutional Court and European Court of Human Rights case law.
- In cases where the judges and public prosecutors abuse their office and cause a Constitutional Court or an ECtHR judgement

“ We also see numerous other instances where there is no freedom of the press and freedom of expression, there are violations of fundamental rights and freedoms; meetings and demonstrations are prohibited in violation of the European Convention on Human Rights, and even some articles of the Constitution are directly suspended. In this country, judges who disregard the rulings of the Constitutional Court and the European Court of Human Rights are revered and promoted.

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regarding a violation of rights that would lead to the sentencing of the government to pay pecuniary damages, those judges and public prosecutors shall be made responsible for the compensation and damages.

“ We have a robust infrastructure and we will put it into use. Having closely monitored the trials such as Gezi Trial and the Osman Kavala Trial, I am well aware of the unlawfulness that has been going on. ”

- Having different duties and positions in the judicial system, the judicial and prosecutorial professions will be decoupled, and the Council of Judges and Prosecutors will be abolished to establish two different bodies as Council of Judges and Council of Prosecutors. As a result, separate regulations and safeguards will be provided for each profession based on the requirements of the task.
- The election of members to the Higher Councils of the Judiciary is important to ensure the independence and impartiality of the judiciary. In this framework, half of the members of such higher councils shall be elected by the Turkish Grand National Assembly with a two-thirds majority in order to ensure pluralism, accountability and democratic legitimacy within the high councils. Where the requirement of a qualified majority cannot be met, the members shall be selected by drawing lots. The other half of the members shall be directly elected by the Court of Cassation, the Council of State, the Union of Turkish Bar Associations, and first-class judges and prosecutors in the civil and the administrative judiciary from among their colleagues.
- To strengthen the principle of independence, the Minister and the Undersecretary of Justice shall not be members of the Council of Judges.
- In accordance with the notion of the state of law, the disciplinary decisions of the Higher Councils of Judiciary shall also be open to judicial review.
- Constitutional and legal guarantees regarding fundamental rights and freedoms shall be provided on the basis of a pluralist and liberal understanding of democracy, and practices that hinder the exercise of rights and freedoms shall be eliminated.
- Legislation that impedes or disproportionately restricts the freedom of thought and expression, assembly, demonstration and association shall be reformed, and all kinds of pressures on these freedoms shall be brought to an end in accordance with the requirements of a democratic society.
- In accordance with the established case law of the Constitutional Court and the European Court of Human Rights, freedom of expression cannot be restricted except in cases of incitement to violence, hate speech or attacks on personal rights.
- Internet legislation shall be reformulated in a way that does not restrict freedom of expression and does not violate personal rights in accordance with international standards.
- The legislation on the right to assembly and demonstration shall be reformed in the light of the case-law of the Constitutional Court and the European Court of Human Rights, and the arbitrary use of the requirement for the notification practice

by the administration before any given demonstration shall be prevented.

Since 2021, in PEN Norway, we have been conducting the Turkey Indictment Project in which we have fully analysed and reported on 25 indictments written after 2016 with a particular focus on freedom of expression. We also shared our report with you. We have found the outcome alarming, as the study showed that all the indictments ignored the principles of domestic law and ECHR regulations. What do you think can be done to protect people's freedom of expression through the law and to bring indictments in line with international legal standards? In their reports, our legal experts recommended, among others, to initiate an in-service training. What is your party's take on this issue?

First of all, I should point out the following: The democratic rule of law was destroyed in Turkey. In other words, we see rampant lawlessness in almost every field in our country. Can you imagine: the level of public trust in the judiciary has dropped to 30 per cent. The judiciary is almost completely politicised. In other words, the state of the judiciary has not been very bright either, but as a result of the developments following the 2010 referendum which caused a change of track followed by a breakdown in the rule of law in 2017, Turkey has entirely forfeited its democratic rule of law. The crux of the matter is that there isn't even any trace of the rule of law in any field, let alone fundamental rights and freedoms of individuals. We have seen this in the report where PEN Norway analysed 25 indictments concerning freedom of expression. In addition to this, we also see numerous other instances where there is no freedom of the press and freedom of expression, there are violations of fundamental rights and freedoms; meetings and demonstrations are prohibited in violation of the European Convention on Human Rights, and even some articles of the Constitution are directly suspended. In this country, judges who disregard the rulings of the Constitutional Court and the European Court of Human Rights are revered and promoted. They are being promoted to better positions. And what does this tell us? Basically this mindset has corrupted the rule of law along with itself. This is the inevitable outcome of instrumentalising the judiciary as a tool to solely save yourself. And that is why we will pay special attention to legal education, in-service training and awareness-raising. But what we will actually change is the mindset itself.

“ In a system where one man can swear and insult at will, and the journalists, youngsters and even children could be put on trial, then there is a big problem. The offence of insulting a public official is already regulated in the Turkish Penal Code. Neither the offence nor its punishment has a legal ground. ”

What will the National Alliance do differently? What steps, for example do you plan to take with regard to ongoing trials, files that have been decided upon by the courts, and the ECtHR judgements left unimplemented? There is an ongoing infringement procedure that could result in Turkey's removal from the Council of Europe. Will there be a dedicated effort to prevent this from happening? Or will you initiate a programme on judicial processes that are often criticised, such as the Gezi - Kavala trial, the Demirtaş trial, trials against lawyers or the trial of the imprisoned poet İlhan Sami Çomak? Or is it too late?

It's never too late. It is not difficult to rebuild the rule of law in particular, and I mean this. Because we know that although there has been a serious regression in terms of domestic legislation, the international conventions we have ratified and the mandatory provisions in the Constitution provide us with the sufficient legal

infrastructure to do so. The Constitution says “the press is free and cannot be censored”. We need to create a mindset that will practice freedom of the press based on this. It’s not difficult. It will be enough to enact certain regulations and maximise public awareness on the issue. It will make our work easier if we provide training to the judges and prosecutors on this issue and raise the general awareness of fundamental rights and freedoms in Turkey. We have undertaken intensive groundwork in this regard. However, the following must be pointed out: There is no need to reinvent the wheel on some issues. We have a robust infrastructure and we will put it into use. Having closely monitored the trials such as Gezi Trial and the Osman Kavala Trial, I am well aware of the unlawfulness that has been going on.

Many provisions in the Penal Code, such as the offence of insulting the President, pose a significant impediment to freedom of expression. As the Six-Party Alliance, do you have a plan to reform the penal code? If so, what is being planned as part of this reform?

“ Can you imagine that there are people being tried and arrested for posting a tweet? How could such a thing happen? This is the result of the monstrous system they set up. What they want is to gag any dissenting voices, so that no one can oppose what Erdoğan says, as his word is the only truth. A typical example of a dystopia. ”

The main feature of the political arrangements adopted in the 2017 referendum was the concept of President who is also a member of a political party. And in our country’s situation, he is not only a member of a political party but its leader as well. Therefore, the offence of insulting the President under Article 299 of the TPC has become obsolete. At the beginning of his/her term of office, the President takes an oath to “exalt the glory and honour of the Republic of Türkiye and perform without bias the functions that I have assumed”. And I wonder if this impartiality has ever been achieved? When the President called the participants of the Gezi Resistance “prostitutes” and the victims of the earthquake “people without dignity and honour”. Who did this name calling: The President of Turkey or the Leader of the AKP? It is clear that the article in question is no longer valid. And more interestingly, if you respond critically to one of these remarks, you will be detained in the morning. In a system where one man can swear and insult at will, and the journalists, youngsters and even children could be put on trial, then there is a big problem. The offence of insulting a public official is already regulated in the Turkish Penal Code. Neither the offence nor its punishment has a legal ground. According to the Justice Statistics for 2021 published by the Ministry of Justice, a total of 110 cases were filed for the offence of insulting the President in 2014, while 9,168 cases were filed in 2021. This means an increase of 8,234%. In 2014, one child was prosecuted for insulting the President, in 2021 it was 305. Even children are put on trial. Twenty two children also faced convictions. As of today, the number of people being investigated for insulting the President is close to 200,000. They then suppressed the data for 2022. We will address this issue in our government.

Social media regulations, restrictions on access to the internet, disinformation laws, the prosecution and detention of journalists are frequently discussed by the international democratic public. What is your take on these regulations? After 14 May, if you come to power in the elections, will people be able to speak freely? For example, if they want to criticise you, will they be able to do so?

This should be the easiest subject for us to respond to. Do not worry, all of the aforementioned legal regulations will be reconsidered. We will remove all obstacles to fundamental rights and freedoms. No one will be penalised or persecuted legally or practically for criticising us or anyone else. Can you imagine that there are people being tried and arrested for posting a tweet? How could such a thing

happen? This is the result of the monstrous system they set up. What they want is to gag any dissenting voices, so that no one can oppose what Erdoğan says, as his word is the only truth. A typical example of a dystopia. I mean, one inevitably thinks of George Orwell's 1984. Let us remember the mechanisms of oppression there, let us remember what was being done to keep the people there in a straightjacket. Look closer and you'll see we have been experiencing very similar situations in our country. The aim here is to create an empire of fear. It is to intimidate the people so they can take any decisions to do whatever they want. But there is a breaking point. This is worth mentioning as we have already mentioned the Gezi Resistance. Gezi is an example of this. Again, like the Gezi Resistance, what should be done within democratic limits is to go to the ballot box. A great change will take place at the elections and we will create a system where 85 million people can breathe a sigh of relief and no one is afraid to express their views. Our leader and Presidential candidate has already said this many times. We've made this point before. "Kemal Kılıçdaroğlu addressed young people: I ask for your vote so that you can criticise me freely and won't be afraid." In fact, on 12 April, our leader posted the following tweet: "When I am the President, you will be able to criticise me freely. But so far, 200,000 people were investigated at his behest. Worst of all, in 2021 alone, He sued 305 children. 101 of the children were between the ages of 12 and 14. He traumatised those children horribly. I'll never do that."

Of course, none of us knows for sure what the outcome will be after 14 May. Meanwhile, we are looking forward to seeing the potential impact of these outcomes on freedom of expression and the press, judicial independence, and the rule of law. Meanwhile, there is this grim picture of perennial rights violations in Turkey. How do you think these violations can be remedied? Will the country undergo a restoration process? What do you think could be the initial steps, the most important building blocks of this process?

First of all, we will have to understand this: This election on 14 May will also have the qualities of a referendum. So, the voters, our people will make a decision on whether we will be a democratic state of law where fundamental rights and freedoms are protected or an autocratic state ruled by the whim of one person. In this sense, the 14 May elections will actually function as a referendum, and I believe that we will come out as winners and our Presidential candidate and leader Kemal Kılıçdaroğlu will be elected in the first round with over 50% of the votes. Yes, the real work starts after that. Because we are facing with a huge wreckage in every field. Whether it is the field of economy, fundamental rights and freedoms, merit-based approach, public administration or of education, justice is nowhere to be found in Turkey. They wreaked havoc on the state and its institutions. For the reasons I have mentioned here, our task is a difficult one, but we have the required experience for this; we have it in terms of human resources, we have the mental power and physical power it takes. We have energy, and we are fully confident. Once we stack all of these together, we will be able to fulfil all the promises. The point here is that rights have been violated in Turkey for years and, unfortunately, judicial decisions were behind some of these violations. This is without even mentioning the malpractices of the government. From social media to other media, there is grave lawlessness and injustice everywhere. But can we fix this? Of course we can. That is easy to do. First of all, a due diligence is needed. And as the Six-Party Alliance or the National Alliance,

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we have already done this to a large extent. Specific damages uncovered during the due diligence process will have to be repaired very quickly. We will utilize the system they have introduced in a democratic manner during this process and we will implement urgent regulations by combining it with a culture of compromise. Such urgent interventions are essential to get the country back on its feet as soon as possible and to carry out the restoration work that will be spread out over the medium and long term. For example, we say we will establish a Strategy and Planning Organisation. More than being merely an economic issue, this is about the planning of the country's administration and therefore about bringing an order to it. This could serve as a basis and allow us to plan everything and easily identify any disruptions within the country. This restoration process will continue until we build a strengthened parliamentary system. Of course, we will solve the problem of lack of a merit-based approach, we will solve the problem of ethics. As soon as we solve them, things will be put back on track. Following the completion of legal arrangements, we will finalise the restoration process by taking certain steps that focus on the implementation. We shall undertake sweeping judicial reforms, and in them, we shall list each and every action that could be taken to ensure that fundamental rights and freedoms are not violated. Moreover, the aforementioned memorandum of understanding and the Constitutional Amendment text contain some significant arrangements. As the National Alliance, we will build a system that everyone will trust, regardless of which party they support. We will put an end to the one-party state and together we will establish the democratic state of law. ■

Muharrem Erkek

Born in Çanakkale, Muharrem Erkek graduated from Istanbul University Faculty of Law and began work in 1994 as a lawyer of the Çanakkale Bar Association. He worked in the administration of the Bar Association between 2000-2002. In the local elections of 2004 and 2009 he was elected as a Çanakkale Municipality Council Member and was on the Executive Board of Çanakkale City Council. He was elected as an MP for Çanakkale for three terms. Between 2015-2018, he was a member of the Group Executive Board of the People's Republican Party (CHP) in the Grand National Assembly of Turkey (TBMM) and as a member of the TBMM Constitutional Commission. He was elected as Party Assembly Member at the CHP's 36th Ordinary Congress. Today, he serves as the CHP Deputy Chair.