

# **PEN NORWAY**

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

**PEN Norway's Interview with Lawyer  
Bahadır Erdem, Vice Chair of the İyi Party**

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

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 Lawyer Bahadır Erdem, Vice Chair of the İyi Party

On the run-up to elections in Turkey your party, the IYI Party, is one of the most important components of the six-party National Alliance. We have read your joint memorandum 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. However, we would very much like to know the plans of your party and the alliance in that regard. Could you please share your opinion on the situation in Turkey and the concrete steps you think should be taken?

The current government has been in power for 21 years in Turkey. We now call it a one-man regime. It has a constitutional definition: Presidential Government System. This is its name, but in essence it is a presidential system. But the term “the presidential system” should not mislead you to think that this presidential system is a genuine one, such as the one in the USA, or a presidential system in which there is a complete separation of powers, in which the judiciary is independent, impartial, and the executive does not put pressure on the other powers such as the parliament or the judiciary. The presidential system was introduced by the AK Party for its own interests. What were those interests? It is a system in which the leader of the AK Party, Mr. Recep Tayyip Erdoğan concentrated all the powers in his hands and abandoned the independence of the judiciary. As the person at the top, the president has so much authority that he even makes decisions on the smallest operation such as the appointment or dismissal of the Provincial Director of National Education of any one of the 81 provinces. This system has not done any good for our country. This system has pushed our country into dire straits. It caused a major economic crisis. And this system is doing everything it can to destroy the law.

We now understand that since the very first days of his rule, it was always in Erdoğan's mind to introduce the one-man regime he imposed to Turkey after the relevant constitutional amendment. At first, Erdoğan spoke in support of policies that addressed all of Turkey and all citizens. He talked about democracy and freedom. Of course, since these were good things, he managed to attract followers within the country. He approached the European Union. He secured support from the European Union. But as he grew stronger and stronger, after the Gezi events, but starting from 2008 to 2009, a completely different Erdoğan and a completely different AK Party emerged. And at this point, we have an Erdoğan who has abandoned the notion of separation of powers entirely, who tries to dominate the judiciary, who does not in any way want to implement judicial decisions that he does not like, who does not hesitate to denigrate them and even do that publicly, who threatens his opponents, who can threaten political party leaders, and who has taken away the powers of the parliament with this constitution. This has to change. Because this did not help Turkey. We are in a state of great crisis, from foreign policy to economy, from economy to social peace in



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our country, this system has not worked for us. Our party, the IYI Party saw this from the very beginning. When the constitution was changed, that is, when the Presidential Government System was introduced, our leader Ms Meral Akşener, took to the lectern and said: We must immediately return to the parliamentary system.

For this reason, she travelled all over Turkey before the referendum. It was already opposed by all sane people who were in opposition, who did not want such a system, who did not want this one-man rule in which the judiciary was not independent and in which one person ruled everything with even the parliament being rendered powerless. I also opposed its introduction a lot on television, I spoke a lot. Unfortunately, we were right. The IYI Party did not want it from the beginning. And the alliance, that which we call the National Alliance, was first formed between the Republican People's Party and the IYI Party. This partnership was first established as an electoral partnership and then took the form of an alliance and now included 4 other opposition parties. The essence of this partnership, its main purpose is to democratically bring down, to change this one-man rule. And immediately, drawing on our strength given by the nation and depending on our majority within the parliament, to reinstate a powerful, strengthened parliamentary system in Turkey and to change the constitution again. This is why we want people to vote for us. This is what we explain to the citizens. Because we have to. Turkey deserves something much better than this system. Turkey is too big a country to be governed by a single man's will and whim. It is a country with a great history, strategically situated in a very important location. Therefore, we will change this, we will reintroduce the separation of powers. This is the most important and primary purpose of the unity of 6 parties and the IYI Party's presence within this partnership. Otherwise, these parties are different from each other. But they are united in democracy. This is the essence.

**As you are an academic working in the field of international law, we want to ask you about the infringement procedure initiated against Turkey at the Council of Europe. What is your take on the non-implementation of the ECtHR judgements in Turkey? If this procedure results in Turkey's expulsion from the Council of Europe, what do you think will be the practical implications of it for Turkey?**

Now, first of all, there is and must be the rule of law in Turkey. And I do not think that there'll be decision to remove Turkey from the European Parliament. Because once we assume power following the elections, the whole world and the European Parliament will see that Turkey complies with the judgements of the European Court of Human Rights. Turkey is a country that keeps its promises. To qualify as a state, you have to honour your covenants and promises in the international conventions you have signed. Turkey is a member of the European Parliament, even a founding one. And we have ratified the judgements of the ECtHR, we will abide by them. The IYI Party does not have the slightest reserve or objection to the ECtHR judgements. As a lawyer myself, I want to say this explicitly. We can criticise and even disapprove the judgments of the ECtHR, just like any other court decision. But we won't leave it unimplemented. So we will not leave the European Parliament. I believe that the European Parliament will not come to this conclusion. If this happens, both Turkey and Europe will have a lot to lose. Because Turkey is an important part of Europe. Both historically, economically, and socially, we have to stand together in this world.

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**We have another question for you related to your legal expertise. Did Turkey's withdrawal from the Istanbul Convention comply with international law? Following the elections, should we expect a policy shift on this issue?**

“ No one is superior to others. We are all equal. 85 million people in Turkey are equal. It is a prerequisite of being human. Regardless of our race, gender, language, social structure, family environment, province of origin, we are no different from each other throughout the 81 provinces and 7 regions of Turkey. The state and the legal system must safeguard this to the end.

We should expect a policy shift. We made a promise on that. Our leader Ms. Meral Akşener, the leader of the Republican People's Party Mr. Kılıçdaroğlu and the leaders of other parties will re-ratify the Istanbul Convention and make another application to be a part of it as the first thing to do after the elections. Just imagine! The name of the Istanbul Convention comes from Istanbul. It was drafted here and signed here. Turkey was the first signatory. But unfortunately, the current government is behaving in this way just because they are held ransom by some religious circles and for fear of not winning the elections. The government thinks they can't win the coming elections. For this purpose, as if to give hush money to some circles and to buy their votes in the elections, they withdrew from the Istanbul Convention on the whim of one person. An international convention is adopted by law and ratified by parliament before it is enacted. Just as a parliamentary approval is sought, a decision by the parliament is required to withdraw from it. We have already brought this issue to the court. And to the Council of State as well. Ms Meral Akşener, our leader personally filed a lawsuit, but unfortunately it was rejected. And the AKP government withdrew from the Convention. We'll immediately re-ratify it. Immediately. We are against the idea of a country where women are not treated equally. Women and men are equal from birth to death. For us, it is imperative that women are treated as equal citizens by the state at every stage, from education to business life, from business life to social life, from social life to the judiciary.

**Social media regulations, restrictions on access to the internet, disinformation laws, the prosecution and detention of journalists are frequently discussed by international democratic public. What is your take on these regulations? What can the government do to ensure that people in Turkey can freely exercise their freedom of expression both in cyberspace and real life, in a way consistent with the framework of the Constitution and the European Convention on Human Rights?**

“ Once we amend the constitution, an independent judiciary will follow. The press will be independent. For this purpose, we will make amendments in the Press Law simultaneously. At the same time, we will fully implement the freedom of opinion of individuals. People will be completely free both in social media and as an author in the works they create and write, as an artist in the films they shoot, in the works of art they act in, in the works of art they create. This is the sine qua non of democracy. It's as natural as breathing. The reason for all of these violations is the AKP's fear. The AKP is afraid of freedom. The AKP is afraid of people thinking and criticising. Criticism, that's what an artist does. Thinking is what an artist does. Young people and educated people think. The AKP is afraid of education. They are afraid of educators and educationalists. They are afraid of educated generations and young people. This is what's behind their oppressive practices. We will also abolish the offence of insulting the President. Because insulting is prohibited anyway. I am not allowed to insult you right now. Neither you are allowed to insult me. Likewise, I am not allowed to insult the President. The Turkish Penal Code already punishes the offence of insult. There is no need for a dedicated provision such as the offence of insulting the President, the offence of insulting a minister or the offence of insulting a member of parliament. There is a punishment already

prescribed by the law. That you have the freedom of opinion on social media does not imply that you must resort to insults. That's an offence. But no one can infringe on you, marginalise you or frown upon you just because you express your opinions, whether they are dissenting or critical. No one is superior to others. We are all equal. 85 million people in Turkey are equal. It is a prerequisite of being human. Regardless of our race, gender, language, social structure, family environment, province of origin, we are no different from each other throughout the 81 provinces and 7 regions of Turkey. The state and the legal system must safeguard this to the end. After the elections, we will hopefully pass all the relevant amendments thanks to the permission we will receive from the citizens and the nation.

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

The most important building blocks are the presence of a real and strong opposition that wants to change this and of a very strong electorate that supports this opposition. A constitution is a social contract. Constitutional changes can only be effective when they are made with the greatest possible consent from the public. What we want to do is to bring back a constitution that contains the separation of powers. Having learnt from all the mistakes made in the past, we as the six parties prepared these constitutional principles together. I was on the commission. We have drafted the articles of the Constitution; various articles of law and various laws are being currently drafted. These six parties are actively working for 2 years now. It is not as if the country is unaware of what we would do after the elections. We announced our prospective activities to the nation one by one. The work has been underway in the last 2 years. And it is a valuable piece of work. There are not many examples in the world. There are not many examples in the world where 6 opposition parties come together for two years and establish commissions to work about their prospective undertakings on all the issues of the country such as economy, education, law and foreign policy in case they are elected, and then announce them publicly. This is valuable. We will not allow any violations. The new government will do everything in its legal power to remedy all violations of rights or correct all legal mistakes that have been made. Women should be free in this country. In this country, all citizens, 85 million people must be free. Young people should be hopeful about the country. Education must be scientific; it must be guided by science. And it is imperative that our faces turn towards science, democracy and human rights. Because I really believe that Turkey deserves this. And we'll prove it. 21 years is a long time. But be sure that this government will change thanks to the democracy and elections. We are looking forward to it. We expect our presidential candidate, Mr Kılıçdaroğlu, to win. For this, Ms Meral Akşener is fully supporting him and so are we as the İYİ Party. We have no choice but to win this election. And I must tell you this: Nothing will ever be the same again. Things won't be as they have been in the last 21 years. So, Erdogan knows that his reign is coming to an end. The citizens of Turkey know it too. ■

## Bahadır Erdem

Bahadır Erdem was born in Malatya in 1964. In 1987, he graduated from Istanbul University Faculty of Law.

In 1992, he received his Master's Degree from Istanbul University Institute of Social Sciences, Department of Private Law with his thesis published in 1992, and in 1998, he received his Doctorate Degree from Istanbul University Institute of Social Sciences, Department of Private Law with his doctoral thesis.

In 2009, he was appointed as a Professor at Istanbul University Faculty of Law, Department of Private International Law. Prof. Dr. B. Bahadır Erdem served as a member of the Board of Directors of the Turkish Patent Institute representing the universities in Turkey between 2004-2010.

He was elected to the Governing Council of the International Institute for the Harmonisation of Private Law (UNIDROIT), becoming Turkey's first official member.

Currently serving as the president of the Family Law Association, Bahadır Erdem is the owner of Erdem/Erdem Law Firm, which he founded in 1999. He is the Head of Law and Justice Policies of the İYİ Party.