
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL COUNCIL**

History Channel re the movie *Midnight Express*

(CBSC Decision 98/99-0203 and 0244)

Decided June 17, 1999

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THE FACTS

On December 26, 1998, the specialty service History Alliance Communications (the History Channel) aired the Award-winning 1978 Alan Parker feature film *Midnight Express*. It preceded the broadcast of the film with a statement by highly-respected program host and moderator Ann Medina and followed it with a panel discussion about the controversial film.

Midnight Express is based on the true life story of a young American named Billy Hayes. It opens with Hayes and his girlfriend on the verge of leaving Istanbul for the United States after a vacation in Turkey. Although the girlfriend is not at all aware of the fact that Hayes is planning to smuggle drugs back to North America, the viewer sees Hayes in the washroom taping blocks of hashish to his body before boarding the aircraft. When Hayes is caught red-handed before boarding, he is detained and his girlfriend is permitted to leave Turkey. The viewer is never made aware of how the police learned of Hayes's smuggling attempt; one is simply left with the impression that the Turkish police were extremely vigilant regarding drug smugglers.

Following his airport apprehension, Hayes is incarcerated in what is portrayed as a brutal Turkish prison. Hayes befriends in particular a semi-deranged American, a dope-smoking Briton and a gay Scandinavian, all of whom are portrayed somewhat sympathetically (despite the fact that they are acknowledged to be criminals). Hayes also has a good deal of contact with the sadistic head of the guards, and with a Turkish prisoner who "makes a living" selling goods to the other prisoners and acting as a stoolpigeon for the prison guards.

Hayes's father hires an ineffective, apparently incompetent, local attorney to attempt, on appeal, to get a reduced sentence for his son, who has, by the time of the appeal, spent 3-1/2 years in the Turkish prison. Billy and his father are advised by the lawyer "not to worry" but, in a dramatic courtroom scene which is one of the central moments of the film, Hayes is sentenced to a *lengthy* additional term in prison by the panel of Turkish judges. Hayes loses control and berates the judges and the prosecutor in the following bitter terms:

[Addressing the judges] I think I've paid for my error, and if it's your decision today to sentence me to more years than I ... [unfinished sentence] My lawyer - my lawyer! That's a good one - says "Be cool, Billy. Don't get angry, don't get upset, be good and I'll get you a pardon, an amnesty and appeal, a this, a that, the other thing. Well, this has been going on for three and a half years and I've been playing it cool. I've been good and now I'm damned tired of being good because you people gave me the belief that I had 53 days left, you hung 53 days in front of my face and then you just took it away.

[Addressing the prosecutor] And you, I just wish you could be standing where I'm standing right now and feel what that feels like because then you would know something that you don't know, Mr. Prosecutor. Mercy. You would know that the concept of a society is based on the quality of that mercy. It's a sense of fair play; it's a sense of justice. But I guess that's like asking a bear to shit in a toilet. For a nation of pigs it sure is funny you don't eat 'em. Jesus Christ forgave the bastards but I can't. I hate ... [unfinished sentence] I hate you, I hate your nation, I hate your people. And I fuck your sons and daughters because they are pigs. You're a pig. You're all pigs.

Once back in prison, he determines to take the "midnight express" out, which is to say, he plans to escape. He and his fellow American inmate attempt to tunnel out but they are caught and are badly beaten and thrown back in jail, Hayes being shipped to the insane ward. Thereafter, when the prison stool pigeon is about to be released, the previously betrayed prisoners decide to repay him by beating him and, in a brutal nemesis, Hayes bites his tongue out. When the guard, asserting his control, is about to take Hayes to the torture chamber for what might be a fatal beating as punishment, Hayes fights back and drives the larger man against the wall, impaling him on a clothes spike, killing him instantly. Hayes then purloins a prison guard uniform and walks out of the prison to permanent freedom.

The Letters of Complaint

On January 6, 1999, a viewer wrote to the Secretary General of the CRTC stating that:

I feel that the public broadcasting of this movie entitled *Midnight Express* offends the sensibilities of many Canadians in general and Canadians of Turkish background in particular. It is a piece of work created to promote hate and racism against a race and nation of people.

It is an utterly racist movie in that it specifically targets Turkish people not necessarily those individuals who supposedly inflicted torture and unusual punishment for the crime. I am certainly not aware of any studies or empirical evidence objectively verifiable that could

reasonably show that there is more torture in Turkish detention centers than jails of other nations. However, it is widely believed at least in North America, that jails in Turkey are far worse than the jails of other nations. This film feeds this racist stereotype that is not based on facts but is created by fictions like *Midnight Express* and other anti-Turkish propaganda. Even if there were instances of illegal behavior or torture by some prison guards and injustices taking place within the Turkish judicial system, how could this justify insulting a whole nation of some 70 million people in the crudest of terms and calling them "a nation of pigs"? Even if there are instances of torture/corruption within the legal/penal system of Turkey, most people in the nation would strongly condemn such behavior.

This film should be banned from public broadcasting because it promotes blind hatred against mostly peaceful and friendly people of Turkey. It depicts Turkish people and not just prison officials as being sadistic monsters. Comments made by the main character were almost always directed to and about the "Turks" and the society and not specifically to prison officials. The absence of distinction between the prison officials and the Turkish society in general is very unfortunate. It is this lack of distinction in the film that makes it a general attack on all Turkish people. It is also this aspect of the movie which makes it a hate literature, that is, it targets a specific group of people, namely "Turks" based on behavior actual or imagined by only a handful of people, certainly not a representative sample of the nation of Turkey.

My understanding is that Canada has laws designed to prevent the dissemination and propagation of hate literature, why would they make an exception for this particular film? Many North Americans particularly impressionable youngsters who have never met a Turkish person or have never had an opportunity to visit Turkey, only come to know and understand Turkish people and Turkey through works of fiction such as *Midnight Express*. Is this film a fair and justifiable representation of people who are mostly peaceful, friendly, democratic and respectful of other nations?

It is also alleged by the History Channel host in her introduction of the movie that somehow the film is instructional in that it may prevent people from smuggling drugs. I think most people smuggling drugs fully understand that it is a crime; one does not have to engage in victimization of innocent people/propagation of racist literature to make this point.

As a Concerned Canadian/Turkish citizen I would like to request that CRTC take action to prevent any future broadcast of this or other films like *Midnight Express* as it is not a Canadian tradition to promote hate or racism.

On January 21, the First Councillor of the Turkish Embassy sent a letter of complaint on behalf of the Turkish community to the President and CEO of the History Channel. This letter was forwarded to the CBSC and reads as follows:

We have been contacted by numerous members of the Turkish community in Canada regarding the December 26, 1998 broadcast of the movie *Midnight Express* on the History Channel.

Those Turkish Canadian citizens, who have telephoned our office and have written to us, express great distress that this film promotes hate and racism against Turkish people. They request the movie not be aired any more.

We sympathize with these people, and support their request that you take action to prevent any future broadcast of the *Midnight Express* which many of them find offensive.

Our deep concern is that this film not merely hurts the feelings of Canadian Turks, but also impedes the advancement of the harmonious social and cultural mosaic of Canada.

Thank you very much for your attention to this delicate matter. We look forward to hearing back from you.

The Broadcaster's Response

History Channel replied to the complaints in the following terms, in part:

We acknowledge that we have a responsibility to provide our viewers with an intelligent context for the issues, historical information and points of view contained in the film. Ann Medina, a respected journalist and commentator, introduces each film, giving it historical perspective and meaning.

Midnight Express (U.S., 1978), directed by Alan Parker (*Evita*, *Mississippi Burning*) is based on Billy Hayes' real life account of being arrested and imprisoned in Turkey for smuggling 200 kilograms of hashish in 1970. The screenplay was adapted by Oliver Stone (*JFK*, *Nixon*, *Reversal of Fortune*), based on Hayes' own book, *Midnight Express*.

The film was not intended to be a slur on the Turkish community or people. The brutality and harshness Hayes encountered in the Turkish prison was portrayed no differently than American prisons are depicted in such programs as *Oz*, and films such as *Night Zoo* and *the Shawshank Redemption*. Director Alan Parker said in an interview with the London Observer, "I was shocked when people said it was anti-Turk," he says. "We hadn't meant it to be racist. We thought we were making a film about injustice." (30 May 1982)

Midnight Express was also critically acclaimed, winning two Academy Awards, for Best Writing (Oliver Stone) and Best Music (Giorgio Moroder), and was nominated for Best Director, Best Picture, Best Film Editing, and Best Supporting Actor. It also garnered six Golden Globe Awards, for Best Motion Picture - Drama, Best Motion Picture Acting Debut - Female, Best Motion Picture Acting Debut - Male, Best Actor in a Supporting Role, Best Original Score and Best Screenplay.

I would like to take this opportunity to explain History Television's programming policy.

Each film that is aired on History Television is considered very carefully. Before we decide to broadcast a film, our Programming Department screens it to ensure that it is suitable for broadcast. The determination of suitability includes ensuring that the broadcast would not contravene the Canadian Association of Broadcasters' *Sex-Role Portrayal Code for Television and Radio Programming*, the *Broadcast Code for Advertising to Children* or the *Voluntary Code Regarding Violence in Television Programming*. Controversial programs are also screened by members of our senior management group in order to double-check compliance with the Codes.

Thank you for taking the time to voice your concerns. We do appreciate feedback and hope that this letter has addressed your concerns. Given the wide variety of Canadian and international programming available on History Television, we hope that you will find programs within our schedule that suit your viewing tastes.

History Television strives to provide programming that is of interest to a wide range of viewers. We regret that you were offended by our presentation of *Midnight Express* on History Television. We appreciate your feedback and would like to respond to your concerns.

The complainants were unsatisfied with the broadcaster's response and requested, on January 15 and February 5, respectively, that the CBSC refer the matter to the appropriate Regional Council for adjudication. The First Councillor added a brief note which further explained his position.

With reference to your letter dated January 27, 1999, regarding the program *Midnight Express* which was aired by History Television on December 26, 1998 and in response to their reply, enclosed please find the signed "Ruling Request" form for further consideration.

We are certainly not satisfied with the reply from History Television which merely states that the film is based on a real life account, that it won a number of awards and that it is not intended to be a slur on the Turkish Community.

We think that *Midnight Express* is a film of a racist nature and offensive to the people of Turkish origin for the following reasons:

- In a number of scenes, the hero uses such insulting sentences as: "you don't eat pork because you are a nation of pigs".
- All Turkish characters, without any exception, are depicted as repulsive, sexually perverse and morally corrupt.

Attached is a copy of a flier that was distributed in 1983 by the Turkish Canadians in Montreal, on the occasion of a conference given by the main character of the film, which reflects the indignation the Turkish Community felt at that time. A newspaper clipping about a discrimination suit filed by the Turkish Americans in 1984, is also on the flier.

I believe that almost everyone that sees the film in question, would agree that the Turkish reaction is fully justified.

THE DECISION

The CBSC's Ontario Regional Council considered the complaint under the Code of Ethics of the Canadian Association of Broadcasters (CAB). The relevant clause of that Code reads as follows:

CAB Code of Ethics, Clause 2 (Human Rights)

Recognizing that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall endeavour to ensure, to the best of their ability, that their programming contains no abusive or discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status or physical or mental handicap.

The Regional Council members viewed a tape of *Midnight Express* and reviewed all of the correspondence. The Council considers that the film in question does not violate the Code mentioned above.

The Content of the Program

It is abundantly clear to the Ontario Regional Council members that the film has a point of view. The story of Billy Hayes and his other drug-smuggling prison friends makes them appear much more sympathetic than the prison guards, who are painted as brutal, grotesque and sadistic characters, and even the judges, who are either insensitive to “poor” Billy Hayes or perhaps administering very tough national laws. In any event, the contrast drawn between the two sides is patent and any reasonable viewer of the film would conclude that the Turkish law-enforcement establishment depicted does not come off well.

It is not up to the Council to determine whether this historical or political perspective is fair or accurate. The point at issue is whether, as alleged by the first complainant, the History Channel has broadcast “an utterly racist movie” which constitutes “a general attack on all Turkish people”, thereby amounting to abusively discriminatory comment in breach of the human rights provision of the *CAB Code of Ethics*. Although the Turkish First Councillor’s (the second complainant) first letter was generally more understated, observing that the film “offends the sensibilities of many Canadians in general and Canadians of Turkish background in particular” and “impedes the advancement of the harmonious social and cultural mosaic of Canada”, it also requests that the CRTC “take action to prevent any future broadcast of *Midnight Express*.” In the First Councillor’s second letter, he does describe the film as being “of a racist nature and offensive to the people of Turkish origin” for specific reasons which he lists.

The Council should state here, as it has in previous decisions, that, in its view, *all* Canadians are diminished by abusively discriminatory comments broadcast about any identifiable group. It is hardly necessary to add that this would as much be the case about persons of Turkish nationality as any other background. As the Ontario and Quebec Regional Councils put this point in *CHOM-FM and CILQ-FM re the Howard Stern Show* (CBSC Decisions 97/98-0001+ and 0015+, October 17 and 18, 1997):

Some have suggested that the fact that a significant proportion, perhaps 65%, of the CHOM-FM audience is French-speaking had a bearing on the appreciation of the comments made by Howard Stern. The suggestion has been made that the abusive comments may have been made worse by reason of the make-up of the station’s audience. The Regional Councils disagree. *Every Canadian, regardless of nationality, is diminished by abusively discriminatory remarks which are aimed at any identifiable group.* [Emphasis added.]

Even though this is a settled issue, it often remains difficult to make the evaluation of statements to determine whether they cross the line into abusively discriminatory territory.

In some respects, the Council finds this case less difficult than others it has been called upon to deal with. From the Council's perspective, the undeniably negative comments made about the Turkish people by Billy Hayes *must* be narrowly viewed, even if they are framed by him in general terms. The fact of the matter is that the only Turks in the film about whom Hayes has any justification to evaluate are those with whom he has had the worst experiences, namely, the representatives of the legal and penal system. They are painted brutally by director Alan Parker but they are the *only* segment of the Turkish population the viewer has contact with. There is no assessment made by the screenwriter, the director or the film's characters about the Turks or Turkey in general. It is a story of penal injustice. When Billy Hayes screams in the courtroom "I hate you, I hate your nation, I hate your people", he does so in anger and bitterness for the lengthy sentence handed to him when he had hoped to be free in 53 more days. That he lashes out against the country and the people does not mean that the film or the broadcaster has gone to such extremes of generality, for they have not. The context is the prison, not the country. The comments are directed at the keepers, not the people. The film is a drama, not a documentary. Moreover, just to avoid any possible misinterpretation, the broadcaster has cautiously and thoughtfully book-ended *Midnight Express* with a responsible introduction and exit. In the view of the Council, the discriminatory comment does not target the Turkish people or the nation. The bitter discriminatory perspective is limited to injustices perpetrated by the jailers, the lawyers and the judges and this perspective of the system is a legitimate political point of view, one protected by freedom of expression and artistic license and, therefore, is not in breach of any Code.

Broadcaster Responsiveness

In addition to assessing the relevance of the Codes to the complaint, the CBSC always assesses the responsiveness of the broadcaster to the substance of the complaint. In this case, the Council considers that the broadcaster's letters responded to the issues raised by the complainants, although not as effectively as might have been the case on the delicate issue of racism. It did provide other fair perspective on the film, even if it did not resolve the concerns of the two Turkish complainants. Nothing more is required of the broadcaster. Consequently, the History Channel has not breached the Council's standard of responsiveness.

This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.