

Focus: Public broadcasting in Germany

Hans Peter Bull

The »climate crisis« in public service broadcasting

Communication processes, management culture, and what they mean for output – On the latest discussion of broadcasting policy triggered by the NDR »Climate Report«

Abstract: A survey of staff at Norddeutscher Rundfunk, which gathered the opinions of more than one thousand employees at all levels, revealed a poor working climate and painted a predominantly negative picture of the broadcaster's management bodies. In particular, the respondents expect a better »management culture« at all levels, claiming that many managers are overwhelmed by the major processes of change currently underway in public service broadcasting and therefore unable to develop clear guidelines for the change needed in the organization. This article analyzes this criticism in more detail. In particular, it asks what »management« can realistically achieve at a broadcaster, given the external constraints involved. The insights gained are placed in the context of the general discussion on broadcasting policy and specifically the competition between public service broadcasters and print media.

Keywords: public service broadcasting; working climate; management culture; communication; programming quality

Translation: Sophie Costella

The quality and costs of public service broadcasting have repeatedly been the subject of debate for decades. Recently, however, criticism of the alleged wastefulness of public service broadcasters and the allegedly poor quality of their

television programming has once again triggered calls not for reform, but for »revolution.«^[1] The outrage was preceded by revelations of the scandalously luxurious benefits received by an Executive Director and the »climate crisis« at two regional broadcasters.^[2] Conflict between the private press and license fee-funded broadcasting is nothing new, but the fronts have shifted once again; public service broadcasters must do more to boost acceptance.

It is reasonable to assume that, since then, all broadcasters have held intensive discussions on routes out of the crisis and developed internal strategies to resolve the deficiencies found. The Executive Director of Norddeutscher Rundfunk (NDR), Joachim Knuth, set up a commission to examine the broadcaster's »corporate culture« and develop proposals to improve it. Addressing NDR employees, Knuth explained the process as follows:

»In order to produce the best possible programming, we need a good climate and a culture of mutual respect – recent weeks and events at NDR in Hamburg and Kiel have demonstrated this to me more than clearly. These conditions were clearly not in place there. We want to get to the bottom of this finding. I see appreciation and trust as the basis for working together appropriately.«^[3]

The investigation team was made up of theologian Stephan Reimers as the »commissioner« and five organizational and management consultants, some of whom are listed as having additional qualifications in psychology, journalism studies, coaching, mediation, team development, etc.

The result of the investigations is wide-ranging and sophisticated, with content worthy of note. Reporting, however, often reduces this content to the finding that the »management culture« at NDR is poor. Interviews with employees – more than one thousand in total – showed the Commission in particular that »many managers at NDR [...] are overwhelmed with the force of the changes and [are] often unable to manage the change processes effectively« (p. 7). »Many employees« did not trust the Executive Board (ibid.). The Executive Director demonstrated his concern over the criticism, and there was speculation in the press about his removal (FISCHER 2023). This could allow the discussion on the fundamental questions of broadcasting development to be reduced to an

1 An example: Opinion piece by Lars Haider (Editor in Chief of the *Hamburger Abendblatt*) (Haider 2022) on statements made by WDR Director and ARD Chair Tom Buhrow (»as a private individual«). Strong criticism of Buhrow e.g., WINKLER 2022 and MISCHKE 2022; see also HULVERSCHEIDT/TIESCHKY 2022; DI LORENZO 2022 and BROSDA 2022.

2 Information on the accusations against Patricia Schlesinger (rbb) (including breach of trust and accepting bribes) and Sabine Roszbach (NDR) (»nepotism«) can be found in Wikipedia articles under their names (both last accessed on 3 July 2023), and on further »affairs« (corruption, false documentation etc.) in the article on »Norddeutscher Rundfunk.« The latter Wikipedia article (last accessed 3 July 2023) states that no evidence was found of a »political filter« at regional broadcaster NDR in Kiel.

3 NDR press release, dated 29 September 2022, printed in: REIMERS/CYRIAX/BRAUCK/MIELKE/PROX/RISSLER 2023: 99. The report was largely compiled by Hans-Ulrich Cyriax (cf. p. 4f.). Where page numbers are provided in the text below, these refer to the »climate report.«

ultimately marginal personnel issue – certainly not resolving the real or alleged weaknesses of the current organization.

It is useful to put the large number of claims and proposals in order. One objective of the considerations below is to achieve greater clarity on the meaning of a change in the *management* of the broadcasters. In particular, it is important to ask whether the quality of the work produced really does depend crucially on the *leadership* of the organization, or which other factors cause a negative assessment of the result. The mood at the broadcaster and the complaints about the current leadership and administration are therefore described in more detail below, and their significance critically analyzed. Finally, perspectives for further development – beyond the analysis of the climate report – are outlined.

What matters in all these deliberations is to carve out the differences between the perspectives, to examine the claims made, and to compare the arguments of the various groups in terms of how reasonable they are, both legally and politically. A summary at this point:

- Some of the complaints from the employees relate to questions of correct organization, which can be resolved by applying practical rules of art (e.g., by clarifying responsibilities) once the usefulness has been considered.
- Some complaints relate to the difficulties of adapting the organization to new developments, be they developments in work organization, or technical or media policy developments caused by digitalization in general and changing audience tastes. Transitional phases in any organization cause uncertainty and discontent, fears over vested rights and crises of conscience; management theory has long provided concepts and instruction manuals for handling these circumstances (»change management«) (see e.g., SCHRIDDE 2011).
- Other complaints are the result of fundamental differences of opinion; disagreements over the role and effects of broadcasting (and thus over the way the political course is set) and over the right method for asserting the legal specifications, and the rules for appropriate leadership that can be derived from this. Fundamental conflicts like this cannot be resolved with a »better leadership style« or other changes in the form of communication; instead, it takes clarifying decisions by the broadcasters' leading bodies. In some cases, the state may need to boost the independence of broadcasters through mandatory standards and assert the standards internally with supervisory measures. Policymakers therefore come into play here despite the requirement for »limited state interference.«

The internal climate at NDR from the perspective of the »climate report«

The »climate report« by Stephan Reimers et al. paints a sophisticated picture of the internal situation of a broadcaster. The Commission put together its findings in twelve assertions that reflect the diversity of voices and opinions (p. 6f.). On the one hand, they found that employees stand »behind public service broadcasting and ›their‹ NDR with conviction and passion,« that they have »high standards for professionalism and good work,« and that there are certainly »people [at NDR] with fears and concerns, but not a general climate of fear« (assertions 1 and 2), as had been claimed by some.

According to the assertions, NDR is »a broadcasting company organized like a public body,« with »immense internal complexity,« »rigid structures, bureaucratic processes, and a lot of rules« (assertion 4). There is doubt not about the necessity of change resulting from the digitalization of the programming offered – »cross-media use« of the communication channels and formats, but about the ability of many managers to adapt the organization to the new requirements (assertions 3 and 5). Although »numerous employees [are] satisfied with their manager,« and there are »departments that work together efficiently,« this is down to the personal dedication and competence of the relevant manager. There is »good leadership not because of the structures at NDR, but astonishingly despite them« (assertion 5). The lack of trust that many employees have in the »Executive Board« is explained by a lack of »orientation and clear decisions regarding the strategic orientation of NDR.« Communication with the Executive Board is often described as a »one-way street«; employees want »more contact and real listening from the top down« (assertion 6).

A section of the further findings relates to the situation under *employment law*. The dual structure of employment relationships, i.e., the fact that employees are divided into those with fixed contracts and freelancers (»two-tier society,« assertion 7) creates discontent, as does an outdated system in the structure of positions and compensation, leading to excessively high or unclear performance expectations on the employees (assertion 8). The workload is very high for many people. Employees who work a lot want to see »not just praise, but more time, more attention, real listening and honest feedback, a clear strategy and prospects for change and improvement« from their managers (assertion 9).

Assertions 10 and 11 also deal with the communication processes at NDR. On the one hand, »the colleague relationships at NDR [are] significantly shaped by mutual distrust and conflicts in places«; employees would like to see »true resonance and real dialog« (assertion 10). On the other, the entire »communication company NDR« is criticized for finding it difficult »to apply its own profession internally and to establish a lively culture of communication and feedback.« Instead, there is

»a culture of avoiding critique and conflict« (assertion 11). Finally, the report sums up that »human resources work is of little importance at NDR.« It is »understood largely as personnel administration,« with a lack of »mandatory programs for expanding competencies.« »Reflection processes, individual and organizational learning« are underdeveloped in places (assertion 12).

The employees are divided

As early as the introduction, Stephan Reimers states that there are »contradictions and paradoxes,« summarizing them in three points (p. 8):

- »Change is absolutely necessary. At the same time, there are strong forces of inertia.«
- »Leadership is crucial. At the same time, many are striving for autonomy and participation.«
- »Dealing openly with one another is the order of the day. At the same time, many isolate themselves.«

Many of the Climate Commission's findings clearly demonstrate the great extent to which NDR employees are divided. Whichever the specific topic under discussion, there are constant reports that some individuals take a very positive view of their working environment and the upcoming changes, while others express criticism that ranges from the moderate to the fierce or even insulting. It is noticeable – as always in anonymous surveys – that people who are unsatisfied are more likely to break cover. One participant generalizes about the »culture of griping« at NDR, while the Commission uses more reserved language, speaking of »some people« who are in a »negative spiral« and »cling, whine and moan« (p. 35). In a separate section »One broadcaster – many climate zones« (p. 51ff.), the Commission explains that the mood differs widely between different units, employee groups, and areas of responsibility – as well as describing significant tension between the units (p. 51ff.). It is difficult to determine how large a proportion these disgruntled employees make up, but their views are worthy of note regardless of whether or not the group is representative.

Most of the desire for change is directed at the broadcaster's leadership, with repeated calls for a *new management culture*. In connection with a particularly dramatic crisis, this desire is illustrated by references to an incorrect, especially »robust,« »authoritarian and dictatorial« management style, »radically strategic command behavior, a lack of ability to take criticism, self-righteousness and irrationality« in a line manager, namely the Director of the Landesfunkhaus Hamburg branch of NDR. Respondents speak of intimidation, injury (of feelings) and poisoning (of the climate within the company) (p. 12f.). The Commission does not examine the extent to which these accusations are justified – presumably

due to the prospect of a legal dispute and because its focus was on employee perceptions. According to the analyses of the Climate Commission, the sharply critical judgements »certainly do not apply to all managers at NDR« – there are also employees »who are satisfied with their managers« (p. 13).

Criticism of the management practice of the *Executive Board* – consisting of the Executive Director, the Directors, and the heads of the *Landesfunkhäuser* [state broadcasting offices] – is particularly detailed (p. 15ff.). The Board is accused of a lack of »clarity of language and actions.« Communication and rhetoric are »often [perceived] as smooth and lacking empathy,« without »real appreciation« (p. 17). »There is no real listening. The Directors think they are listening, because they have learned in training courses how important it is. But it is not real. Rhetorically brilliant, but not real« (ibid.). Furthermore, the respondents continue, there is a lack of »business thinking« at the top of the »business« (ibid.). Members of the Executive Board take a positive view of their collaboration, although the majority of the Directors »makes careful criticism of the collaboration in the committee.« For example, one says, »We do not work together well in the Executive Board. Each person only looks at their own field« (p. 17f.).

Causes mentioned for the high level of discontent include sometimes inappropriate behavior by individuals, sometimes obsolete and hardened »structures« regardless of people, and especially an incorrect »management culture« – as well as the incorrect and opaque way in which management positions are filled. Respondents claimed that leading positions in programming are filled »based on journalistic skills and less based on suitability for management and social behavior.« »In order to improve the climate [...] a fundamental change in the recruitment practice for managers [is] essential,« they state (p. 18f.).

It is notable that the employees surveyed seem to have said nothing about the role played by the staff council and the Editorial Committee required by the NDR state treaty (§§ 41f.). Nor is the role of the *Rundfunkrat* [Broadcasting Council] mentioned.

The situation of the freelancers, employees on fixed-term contracts, and agency workers under employment law is covered in some detail (pp. 20–29). They suffer from great uncertainty and unfair practices in their day-to-day work; it is obvious that the work climate suffers as a result. Other framework conditions of the work, such as unfair pay systems, effective dependencies, and overwork are also covered. There are multiple complaints of overwork, including from employees on permanent contracts (p. 41ff.). One employee calls the workload »inhuman« (p. 42; where there are also further drastic statements).

Has the shift to »cross-media« production already failed?

An entire chapter is dedicated to the debate on the future of broadcasting and the right transformation strategy (pp. 30-34); the chapter that follows then looks at the framework conditions for the changes that are underway (pp. 35-44). Needless to say, the criticism of public service broadcasting expressed by policymakers and the media is also reflected in the broadcaster's internal discussions – as another factor causing discontent and uncertainty among staff. What they want is »an overall strategy for NDR,« »a new vision,« or (to quote Hamburg's Senator for Culture and Media Carsten Brosda) »an ambitious blueprint for the future, from which the concrete steps for reform are derived« (p. 31). Admittedly, the Senator's call is directed primarily at policymakers rather than the broadcasters themselves, but he also states that the broadcasters need to »contribute even more and more passionately« to the debate on fundamental principles (p. 31).

NDR has already initiated a comprehensive reform of the organization in the form of the »cross-media business model,« which combines the previously separate broadcast channels of radio, television and online into a single network divided into topic areas. This reorganization caused stress for employees, who say they feel overwhelmed (p. 33). If individual respondents are to be believed, »cross-mediality« has already failed (p. 39, see also p. 46f. on the »One Direction« concept).

»A lot of communication, but little understanding«

The report frequently mentions that internal communication is unsatisfactory, and indeed dedicates an entire chapter to providing more detail on this (pp. 62-68). There is »a lot of communication, but little understanding« between people; »little personal contact or real listening« (p. 62). The report states that meetings available with managers are »often designed in a one-dimensional way, with a structure in which the hierarchy speaks and the team asks (critical) questions.« Rounds of communication are perceived as »too smooth, out of touch, and insincere.« The same colleagues speak every time; there should be an effort to »motivate the non-speakers« (p. 65). There are complaints about »the loss of a culture of disagreement and discussion,« but also about »an excess of disagreement.« What the employees do agree on is that tolerance of other opinions should be boosted, mistrust reduced, errors tolerated« (p. 66). The feedback culture and error culture at NDR are deficient (p. 66ff.). One positive example mentioned is that the production directorate had held »360-degree management feedback« (p. 67); one negative is the tone of many (!) line managers at NDR. Strong criticism is sometimes even expressed with a »degrading,« »humiliating« choice of words (p. 64).

Some complaints are clearly justified...

Some of the complaints from the employees are clearly justified and can be resolved by legal and organizational changes. For example, attempts must be made urgently to end the system that puts freelancers and employees on fixed-term contracts in a worse position, to adapt the compensation rules to changed performance requirements, and to clarify imprecise responsibilities. This will require changes both to various rules and to the practice of applying them.

The Climate Report's criticism of the broadcaster's *personnel administration* is also largely plausible (p. 69ff.). An organization that is as large and as vulnerable to criticism as a broadcaster needs a human resources department that does more than just concluding and processing contracts, authorizing payments, deducting taxes and social security contributions, and setting up reserves for the pensions of departing staff. Today, the role of »personnel management« also includes planning and conducting staff selection with the necessary care, continuously supporting employment relationships by offering advanced training, individual career planning, transfers, and promotions. The staff in the department responsible at NDR does not appear sufficient for this role. Incidentally, there is a possibility that this situation is the result of a strategy that sees cutting jobs in administration as the first step in implementing the unavoidable calls for savings, since any saving in the production and distribution of programming is rejected.

The anger at the excessive *internal complexity* is also understandable. Responsibilities are evidently divided between many levels and units; decision-making processes are long and lack transparency. Unclear rules on responsibilities lead to »wrangling« and errors (p. 38). The call for flatter hierarchies and greater transparency in decision-making is thus presumably justified. Changing an organization like this effectively is one of the most difficult tasks facing any management body. Where there are also calls for greater participation for those affected, it becomes even more difficult. To tackle the challenge, company management regularly turns to external experts, with public bodies also having repeatedly commissioned management consultants to come up with this kind of new concept in recent years. Their experience certainly shows that it is a good idea to base key steps in a desired process of change on one's own investigation of the weak points and considerations of the change, and especially to involve employee representatives in the process. External consultants have the benefit of an objective view, but they first need to develop a concrete image of the organization to be changed and the internal climate, while insiders are (or may be) already very familiar with the characteristics of the organization being examined.

... others are inexplicable or in need of clarification

Other complaints are at least unclear, if not entirely contradictory. For example, there are both complaints of weak leadership and claims that decisions are »pushed through, imposed« (p. 13). As reported, the »hierarchical system at NDR« is criticized, but there is no explanation of which organizational units are superfluous or problematic. Respondents note that »not all employees with management responsibility feel like managers« and that middle managers feel like they are merely proxies of higher bodies (p. 11). These are criticisms not of incorrect organization, however, but of poor practice in the perception of competencies.

One complaint that is difficult to understand regards the seating and standing arrangements at an event intended for the Executive Director to answer questions from employees. At an »Open Talk« discussion event in the production directorate, the »top and bottom« at NDR was apparently clear to see: »The Executive Director stands, the audience sits. The audience asks, the Executive Director answers« (p. 66). But how else should an event like this be organized? The sense of everyone – those asking and those answering the questions – being »on an equal footing« with one another, as some participants clearly would have wanted, would have been very impractical given the large number of people in attendance.

The unease over the Executive Director's perceived superordination remains even when the Executive Director, Directors and editors sit together at one large table. This is because the superordination has its roots in the laws and state treaties on broadcasting, and in the charters that set out the bodies of each institution. »The Executive Director leads NDR« and »must ensure that the service offered by NDR corresponds to the service requirements« (§ 30 Para. 1 and 6 NDR-StV). The person in the leadership role is obligated to consult their deputy and the Directors, is subject to oversight by the Broadcasting Council (in »general programming matters«) (§ 19 Para. 2 NDR-StV), but remains superordinate to the employees – even if they rarely or never use this legal position. »On an equal footing« is a good prerequisite for successful discourse free from domination, but not for making binding decisions on controversial questions. Wherever the constitution includes decision-making by representatives and their officers, this necessarily creates inequality in the positions of power, which equal seating arrangements will not be able to cover for long. Line managers need to fulfil their oversight role, even if it makes them unpopular.⁴

4 In Niklas Luhmann's theory of organization, the application of the image of »above« and »below« to human relationships is considered one of the »intellectual feats of mankind,« the »most magnificent inventions of culture«; it appears to be the fundamental condition for every »higher« order of human coexistence (LUHMANN 1964/1999: 162 note 14 with further references). Admittedly, Luhmann does not look at the rebellion of the »below« against the domination of this order, which would also be relevant in this context.

What can »management« achieve?

The closer one looks at the criticism, the more questionable the hypothesis becomes that poor management is key to the internal climate of the organization and the quality of the programming.¹⁵ The success of management depends »for example on the personality, the *management behavior* (such as the management style [...]), and the *management situation* in question; but also on those being managed: where those being managed do not see the threat of sanctions as significant, for example, such sanctions are no longer a source of power that is relevant to management« (RIDDER/SCHIRMER 2011: 207).

Some of the Reimers Commission's suggestions are taken from management theory, which was initially developed for private businesses. Expertise from business economics can be applied to public service entities in the sense that many of the insights of management theory can be applied to any organization in which people work together on a shared »mission.« Regardless of the organizational form, members of the organization need to be motivated, »human resources« maintained and developed further. As stated above, this is the role of personnel management; management can contribute by displaying exemplary behavior.

However, »management« of a public service organization is always different from the »business management« of a private company. A broadcaster is a »company« in a figurative sense at most. Because it is not run in pursuit of profit, it necessarily acts differently from a private company. It does not have obligations towards shareholders to ensure the profitability of business operations, but instead (like all public service organizations) needs to act »economically,« i.e., use the mandatory license fees paid by citizens carefully and frugally (cf. § 32 Para. 2 NDR-StV). The Executive Directors are not (just) CEOs, i.e., legal representatives of the broadcasters in concluding contracts and other legal business, but also provide a guarantee that the broadcasters' role under the constitution is adhered to (cf. § 30 Para. 6 NDR-StV). As a result, »management culture« at broadcasters means more than the (unwritten) style in which employees are treated and the focus on the organization's profitability – it is also an element of internal supervision in the interests of the »stakeholders,« i.e., the general public.

The »features of good management,« as compiled by management consultants, therefore have limited applicability to public service broadcasters. For example, the theory says that line managers should be »coaches not bosses« and check employees work as little as possible.¹⁶ »Results orientation« is also called for – at

5 For the theoretical foundation of management culture, management style etc., see RIDDER/SCHIRMER 2011: 206-217).

6 Found, for example in: ABC-Personal-Strategie. Die 10 Merkmale einer guten Führungskultur, www.abc-personal-strategie.de (accessed 20 April 2023). This also includes other keywords such as »flat hierarchy and discussion instead of commands from above,« »commitment to the team,« »honest, prompt and open« communication, and »feedback for managers.

the very least ambiguous for a communications factory that is asked to impress not by profit, but by the quality of its services. Incidentally, according to management theory, a good manager should »themselves be productive and hard-working« – undoubtedly an important benchmark, although some respondents told the Climate Commission that some managers at NDR have too much journalistic involvement in programming. This throws into doubt the demand for more attention to be paid to journalistic qualifications than other skills when selecting managers. Journalists have proved to be outstanding Executive Directors in the past; some were not only the highest organizational body at their broadcaster, but also acted as examples of journalistic excellence and thus figureheads for their institutions. Conversely, a »pure bureaucrat« would probably not enjoy a positive image among the journalist-dominated employees of a broadcaster.

The Reimers report confirms that management is constantly subjected to a large number of sometimes contradictory expectations. It not only has to meet the formal obligations of line managers, but must also take into account the unspoken expectations of the employees, which are impossible to formalize.¹⁷ From this point of view, exercising legal powers does not seem a high priority (LUHMANN 1964/1999: 215, note 25). Under certain conditions, consolidating a position of influence requires »significant skill, a complex morality and, above all, the ability to behave in a sophisticated, even contradictory, way« (LUHMANN 1964/1999: 213f.).

Are managers and those they manage »on an equal footing?»

In line with the assigned role of the Commission, the Climate Report contains little criticism of the conduct or views of employees, with the exception of a few remarks referring to their own group or perhaps even the individual interviewee in a more or less self-critical way. This one-sided critique corresponds to experience in everyday life, in which managers are regularly referred to as »incompetent,« »authoritarian,« or »dumb,« simply because they are managers. Fortunately, it is now largely out of fashion for managers to display the same disparaging behavior towards their »subordinates.«

All this individual criticism of the communication and decision-making processes at the broadcaster gives the impression that some of the employees fail to develop the level of self-confidence, initiative, and principles that are so essential for working together and dealing with one another »on an equal footing.« Surely this is the only explanation for even the seating arrangements at a

7 On the formal status system, see LUHMANN 1964/1999: 156ff. (162ff.) and, on the role of the leader and line managers 206ff. (212ff.). Luhmann's position may appear conservative today, but his description of the management dilemma is anything but unworlly.

question-and-answer session with the Executive Director being seen as oppressive? How can it be that editors with fixed contracts and respected expertise unquestioningly accept orders from managers that they consider wrong, indeed that they feel »forgotten about« as members of middle management, rather than using the freedom of discretion they have been granted (p. 11)? And above all: These journalists have the courage to exercise decisive critique of external experts and especially politicians in their programming – so why do they not develop the same creativity when it comes to internal debates about the appropriate internal culture and the strategy for the future? If the upper level of management really is »often uncertain« in its actions, if it is »indecisive,« if it »maneuvers and uses tactics,« this could provide plenty of wriggle room for confident employees, who would not have to explain that they were assuming »responsibility for the unreliability of a boss« (as statements quoted on p. 11 indicate).

Of course the management of a broadcaster still needs to take employees seriously where they find internal communication inappropriate, and suggestions for how to rectify matters should be taken into account wherever possible. For example, employees say that they would like to see various initiatives at management level, such as »productive critique in meetings« (p. 66) and »structured feedback.« This kind of change in communication practices can lift the mood of the employees for a while and allow a certain level of mutual trust to form. A friendly, cooperative climate at work is also a good basis for successful products.

But there are other factors involved in guaranteeing high-quality output, too. The organization's management cannot command all these factors themselves – there are some that they must simply be aware of and adapt to. The way freelancers (among others) are treated under labor law, for example, is shaped by financial constraints, which in turn depend on income trends and therefore on political decisions, which the broadcasters are affected by but not involved in. Nor is it possible to be in control of the psychosocial requirements for successful leadership – the emotions of those being led (see also RIDDER/SCHIRMER 2011: 213).

Mistrust of the leadership sits deep in some employees. Even if it ebbs temporarily, there is no guarantee that the mood will not change for the worse again when triggered by events (such as the suspicion of corruption). In some cases, all it takes is criticism from a few insiders to devalue trust-building measures. Furthermore, the internal climate of an organization can also be negatively impacted by public opinion, which cannot be predicted and for which no-one is responsible. All the leadership can do is try to take proactive measures to eliminate certain elements of the criticism (in this example, by defending against or punishing corruption).

The »soft« factors in the internal climate come from many different sources, predominantly from the uncontrollable flow of public opinion, and ultimately of the zeitgeist. Journalists have a great deal of practice at picking up on these

currents in the public consciousness – for example those formed in the depths of electronic networks – in their work and using newly-accentuated values as the basis even of their own conduct. In addition, they are confronted every day with the polarization of society, which results from the over-moralization and aggression of activist groups, and often find it difficult to deal with fundamental conflicts in society in their journalistic work (insight on this in statements from NDR employees: p. 31f.). Some employees, on the other hand, receive fame and public recognition that tempts them to mentally raise themselves above their colleagues and even their managers, and thus to place less value on internal collaboration. There can be no question that these kinds of problems of consciousness have an effect on productions.

The stark social and political contrasts that media producers have to deal with make internal communication and decision-making more difficult (as the Reimers Commission also found: p. 31f.). It is therefore not enough for the leadership simply to communicate with the employees in a non-authoritarian way, to show interest and warmth, to inform them of collegiate decisions as clearly and early as possible, etc. The leadership can only announce clear decisions on the future of broadcasting if it is able to assess the framework conditions with some accuracy – but there are currently myriad (external) reasons that make this difficult. Neither the Executive Directors nor the editors know whether the broadcasting landscape is about to be reconfigured and how important their own institution will be in future. When planning »cross-media« links between their various channels and formats, they largely have to rely on trial and error. The Buhrow case showed what happens when an Executive Director ignores this insight and instead attempts to predict the future of the broadcasting system and announce far-reaching reforms to both organization and programming: Policymakers and the press tore his intervention apart before he had the chance to flesh it out.

The competitive relationship with commercial media...

To circle back to the question at the start of this paper: Public service broadcasting undoubtedly finds itself in a critical situation, but this is not because some observers consider its services too extensive, too poor or too highly diversified, nor because of the scandalous greed at executive level. The radical criticism and »revolutionary« proposals to reduce broadcasters' programming and staffing levels are essentially a reaction to their success over many years. When commercial broadcasting was first permitted in the 1960s and newspaper publishers invested heavily in the sector, many expected the public service broadcasters to quickly collapse in the face of the competition – that they would be pushed out

of the market and remain active only in niche areas. This did not come to pass: Public service broadcasting retains undisputed popularity among a large part of the public and makes a significant contribution. The situation for the press, on the other hand, has worsened, with competition for advertising revenue intensifying as the switch from print production to digital services picks up speed. It seems that many publishers would now like to transition their services entirely onto the digital market. In competition with public service broadcasters, commercial providers bring up the same old arguments as always: The broadcasters are excessively large, wasteful and create a dictatorship of taste; their employees are one-sided, »left wing« or arrogant.^[8] Assessments like this contain not only a significant amount of generalized outrage, but also a decent portion of veiled assertion of their own interests.

Now that the younger generation meets its needs for news largely on digital devices, independent from the »linear« services of broadcasters, there has also been concern from many who are personally affected by the new wave of criticism – be it those responsible, like Tom Buhrow, or employees of broadcasters – and from those who have observed the change with amazement. The only recommendation for a citizen who values public service broadcasting can be to take the justified elements of the criticism very seriously and to ignore simple complaining, from both inside and outside, as far as possible.

... and the mission of public service broadcasting under constitutional law

However important it might be to improve the internal climate and the legal and social situation of broadcasting staff, a much greater factor in the fate of public service broadcasting is how its output – its programming – is accepted by the audience, other media, and policymakers. There is no way to order or conjure up appreciation – it must be gained through the service provided. But the quality of the services will always be disputed, simply because the benchmarks are disputed. Many television viewers prefer the programming from commercial broadcasters because it is generally more entertaining, does not demand much from the recipient, and is easier to consume. Commercial broadcasters are guided by

8 The Climate Commission report summarizes the external criticism as »too expensive, close to the state, and uncontrollable« (p. 30). In a recent comment piece regarding the dispute over the level of the license fee, a newspaper editor claims that there are some »bosses, for example at NDR, for whom external experts have attested great incompetence« (TIESCHKY 2023: 44). She does not mention which external experts these might be. The piece might be referring to the climate report discussed here, which reflects the opinions and voices of the NDR employees (contentious in themselves). Yet the Commission did not examine whether these statements were justified; that was not part of its remit.

the audience's tastes as expressed by the market;⁹ viewing figures play a key role. Someone who is satisfied with the commercial broadcasters is also likely to be unhappy about paying the license fee. If public service broadcasting is to enjoy general acceptance, broadcasters cannot ignore the fact that audience tastes sometimes differ vastly from the editorial offices' and authors' concept of quality. Concessions need to be made. But viewing figures alone do not tell us whether public service broadcasters are fulfilling their mission appropriately or how high the journalistic quality of the programming is.

The »functional mission« of public service broadcasting is well known, and largely excellently met. NDR, for example, »organizes and distributes [...] broadcasting as a medium and factor in the process of free, individual and public opinion-forming and as a matter for society in general.«¹⁰ »It must give broadcasting participants an objective and comprehensive overview of international, European, national and state-level events in all key areas of life. Its services must serve to inform, educate, advise and entertain. It must offer contributions to culture in particular and is authorized to invest in film subsidies. It can also provide special media.«¹¹

The current wording of this mission is not set out in constitutional law; not all the channels and portals that NDR has set up are sacrosanct. The idea that broadcasters may be forced to make cuts, such as by combining local stations, can therefore not be ruled out. Preventing this will depend on gaining political allies against excessively radical plans that are currently under discussion – and securing the best possible programming quality will become ever more important.

The quality of the programming is what counts

A high level of discipline and sincerity in the design of programming is needed. Services that are designed entirely to entertain a mass audience are not enough. Crime films and live sporting events do have their place in public service broadcasters' schedules in order to make the programming as a whole more attractive, but the dominant feature should ideally be well-founded, well-structured reporting on all events, developments and living situations that interest the public. Broadcasters should provide extensive, content-driven reporting with information that is explained, evaluated, put into context, and commented on. »The need for orientation and contextualization is growing [...]. With increasing uncertainty about the foundation on which we should talk to one another, what

9 For example BVerfGE 119, 181 (217 f. with further references); 149, 222 (260 Rn. 7f.); 158, 389 (417 Rn. 78).

10 § 4 Clause 1 NDR-StV based on BVerfGE 12, 205 (260). Cf. a. BVerfGE 57, 295 (320); 83, 238 (321); 119, 181 (218) and 158, 389 (416 Rn. 75ff.).

11 NDR has its own guidelines on the design of the »functional mission«: § 5 Para. 3 Clause 1 NDR-StV.

is needed is less opinion and more research [...]. We need investment in in-depth background reporting and good explanatory formats« (BROSDA 2022).^[12]

What we refer to today as »public opinion« is actually a conglomeration of correct and incorrect observations, assessments and surveys: some have proliferated from the depths of the »ethnic soul;« some are organized in a targeted and interest-related way; many are contradictory; few are sophisticated enough to provide precise orientation (BULL 2023, esp. p. 136ff.). In this situation, the most important appeal to the media in terms of social ethics and the law is that they have an obligation to provide truth. Working to achieve truthfulness is the first professional obligation of any journalist, and applies not only to reporting, but also to comment pieces – out of respect for the people being written about (BULL 2021: 120). Even a hint of the increasing intensification of reporting based on suspicion is difficult, as it necessarily means working with unproven claims, but »something always sticks.« A correct understanding of truth in reporting also means taking the »other side« into account – »audiatur et altera pars« and working to ensure that the reporting is complete and sufficiently sophisticated; certainly not reducing reports to headlines, as tabloid newspapers do in order to attract attention. (A negative historical example from the world of politics is the »Ems Dispatch,« where Bismarck’s government exaggerated a diplomatic text in order to whip up emotions and trigger a war.)

There is no question that public service reporting should be characterized by objectivity and party-political neutrality. But the requirement for objectivity is often misunderstood and equated with the also-necessary »distance from the state« – especially when this is intended to mean that state bodies or leading politicians should not be included in reporting to the same extent as other participants in the public discourse. Indeed, the Federal Constitutional Court has drawn closer to this viewpoint by judging statements by a Federal President, a Federal Chancellor, and multiple Federal Ministers to be unconstitutional or »almost« unconstitutional.^[13] But if reporting on political controversies and differences of opinion only or largely covered attackers that were »distant from the state,« broadcasting would not be the desired medium and would certainly be lost as a factor in public opinion-forming.

From outside, it is difficult to determine how easy or difficult it is for program makers to adhere to the principles of objectivity and neutrality, diversity and distance from the state in the face of all possible resistance. Many have confronted the influence of party politics, and the Federal Constitutional Court ultimately

12 This aspect is strongly emphasized e.g., by KEIM 1992: 129. See also my media critique pieces: BULL 2020 and 2023.

13 Cf. The series of rulings BVerfGE 136,323 (Gauck); 138, 102 (Schwesig); 148, 11 (Wanka); 154, 320 (Seehofer), 162, 207 (Merkel); see also BVerwGE 159,327 (»Dügida«); applicable however the dissenting opinion from Judge Wallrabenstein in BVerfGE 162, 271 with the limitation of the neutrality requirements to the administration. See also the decisive contradiction from Meinel 2023.

helped to reduce this influence in the selection of top positions.¹⁴⁾ Friedrich Nowottny, Executive Director of WDR at the time, noted: »The real danger of the public service organizational model lies in its vulnerability to group egoism. The internal pluralism of the supervisory committees presents a constant challenge for Executive Directors, programming directors and journalists who work hard to assert themselves over the influence of antagonistic forces in society« (NOWOTTNY 1992: 101). Yet the quality of services demanded can also be threatened by internal deficits or counter-forces, above all by insufficient qualifications on the part of individual authors or editors, and by »missionary zeal,« »by deliberate moralizing,« »by pointing fingers« in order to make clear »what sort of viewer, of listener« is desirable (NOWOTTNY 1992: 110).¹⁵⁾ This insider observation from 1992 appears particularly relevant once again today.

The »serving freedom« of journalists

The journalists that use the institutional freedom of broadcasting are themselves bearers of individual freedom of expression and reporting yet, as employees of a broadcaster, they have a duty to obey the programming principles when making use of these rights. The binding interpretation of these principles is ultimately the role of the Executive Directors with their responsibility to the outside. The Executive Director thus theoretically has the right to issue directives in this regard (although this is practically replaced by other, less formal means of influence).

Freedom of broadcasting is »primarily a freedom that serves the freedom of opinion-forming in its elements of objective and subjective standards.«¹⁶⁾ The loss of individual personal fulfilment is compensated by the opportunity to collaborate in a shared product. Legislation in the state of North Rhine-Westphalia describes the particular legal position of broadcasting editors – between the freedom of fundamental rights and their incorporation into the organization they work for – as follows (this applies to all broadcasters, including private ones):

»Those working in editorial roles must fulfil the programming tasks assigned to them within the framework of the broadcaster's overall responsibility under their own journalistic responsibility, taking the programming principles [...] into account. This does

14 BVerfGE 136, 9 (ZDF ruling).

15 The then WDR Executive Director instead recommended »disclosing facts that speak for themselves bluntly and, where appropriate, with ironic distance and otherwise leaving the thinking and evaluating to the people themselves.«

16 BVerfGE 57, 295 (320 – emphasis in original).

not affect contractual agreements and rights to issue directives on the part of the broadcaster.«^[17]

Before this, the Federal Constitutional Court explicitly declared it permissible for programming staff to be granted this kind of participation right.^[18] This »strengthens the professional group within the specialized enterprise of broadcasting that directly fulfils broadcasting’s mandate to be a medium and factor of opinion-forming.« As a result, »editor involvement [is] not the granting of external influence, but internal participation in the exercise of the role protected by Art. 5 Para. 1 Clause 2 of the German Basic Law. As such it is not granted to the editors in the interest of their personal fulfilment in their profession, but in order to fulfil their communication role.«^[19]

The Climate Report does not mention the involvement of editors at NDR, nor the role of the staff council. There appears to be a need for clarification here.

Public service broadcasting’s freedom from and dependence on the state

The report on the climate at NDR does not mention the state oversight of NDR, either. Limited to legal supervision, responsibility for this lies with the state governments that formed NDR, but appears to play little role. The state governments who are to exercise this legal supervision are prohibited from supervising programming; this falls to the internal bodies of the Executive Director and the Broadcasting Council (§ 39 NDR-StV).

The state does, however, have a duty to ensure that public service broadcasting is maintained, appropriately equipped, and providing correct programming. In established case law, the Federal Constitutional Court has emphasized that the state must guarantee the existence and further development of public service broadcasting.^[20] Conversely, public service broadcasting could not exist in this form, nor collect mandatory license fees, without its connection to the democratic state and its resulting dependence on the state’s legislative power. The institutions’ dependence on state framework regulations is the price of their freedom in

17 As occurred through § 32 Landesmediengesetz NRW, dated 2 July 2002 (LMG) in the version, dated 1.6.2022. The NDR state treaty does not contain any provision in this regard except the reference to the editorial statute (§ 41).

18 BVerfGE 83, 238 (250, 321) on § 13 Rundfunkgesetz für das Land Nordrhein-Westfalen (LRG) [State Broadcasting Act] in the version, dated 11.1.1988. The LRG was later replaced by the State Media Act (LMG). The WDR act (in the version, dated 25 April 1998) now stipulates editor representation (as »professional group representation«) and a mediation committee (§ 30).

19 BVerfGE 83, 238 (321).

20 BVerfGE 74, 297 (374 f., 350 f.); 83, 238 (298); 90, 60 (91); 119, 181 (218); 136, 9 (30); from the literature: Grabenwarter 2015 Rn. 818 with further references. The existence of public service broadcasters is protected under constitutional law, but not each individual broadcaster (BVerfGE 89, 144 [153]; Grabenwarter Rn. 820).

terms of broadcasting content, which state law protects against the state itself. The framework itself can only be defined in political argument.

No-one has yet come up with an alternative model that would make public service broadcasting independent of the state, including financially. One could consider setting up a broadcasting parliament, elected by the population, that would replace the broadcasting councils. This is the type of solution that Tom Buhrow must have been thinking of when he mooted the idea of »a kind of constitutional convention for our new, charitable broadcasting« (quoted in BÜSCHER/DEBES 2022). Such a »parliament« would also be needed for further standardization and monitoring, however, in addition to the broadcasting »constitution.« Specific popular representation like this could certainly broker stronger democratic legitimation than the existing broadcasting bodies, but it would still be unable to ensure a more solid basis for funding and organizing broadcasting in the future. In addition, even in new representative bodies like this, it would still be impossible to prevent political parties from playing a crucial role.

The allegory of the old greenhouse

The Climate Report commissioned by NDR finishes by depicting the broadcaster's development in an allegory (pp. 93-95). In it, the report's author, Uli Cyriax, compares NDR with a state-run greenhouse that has changed over time: The gardeners became more lax; thick, unkempt greenhouse forests grew up; the ivy climbed the old trees and strangled exotic flowers. Other, smaller greenhouses lured visitors away, and soon many were calling for the entire greenhouse to be torn down or at least radically reduced. Then, a new head gardener arrived and asked an expert to examine the state of the greenhouse. The expert's report was »sobering and tough.« »There were questions upon questions and with them came little shoots of hope. We do not know what the answers will be. Yet.«

Hopefully they will be found soon.^[21]

21 The Administrative Council of NDR has now given an initial response. According to a report in the FAZ on May 6, 2023, the committee's chair, Karola Schneider, stated that »the 'Climate Report' has been attended to in detail. The Administrative Council recommends designing the proposed processes in such a way that relief and changes in the corporate culture become noticeable in the short to medium term.' The abolition of the 15-year limit for freelancers is a step in the right direction. But a broad approach needs to be taken to the topic 'by the cultural circle that is to be newly formed and is to address the proposals of the Reimers team.' Staff development will be given greater significance in particular with regard to managers.« The number of women in leadership positions at NDR fell slightly last year to 46 percent; »efforts must be made to achieve gender parity here.« To stay with the allegory: There are hopes for new cultures – without being able to define them – and for new head gardeners (although the leadership style itself was also criticized).

About the author

Dr. Hans Peter Bull (*1936) was Professor of Public Law from 1973 to 2002 and Director of the Department of Public Administration from 1996 to 2005 at the University of Hamburg. On a sabbatical from university teaching, he was Federal Data Protection Officer from 1978 to 1983 and Interior Minister of the State of Schleswig-Holstein from 1988 to 1995. He has worked on topics in media law and media policy in a variety of contexts.

References

- BROSDA, CARSTEN (2022): Was wir wollen. In: *Süddeutsche Zeitung*, dated 10 November 2022, S. 27.
- BULL, HANS PETER (2020): Die Krise der Medien und das Dilemma der Medienkritik. In: *Recht und Politik* 2020, 441 ff., also in: BULL, HANS-PETER (2023): *Demokratie und Rechtsstaat in der Diskussion*, p. 179ff.
- BULL, HANS PETER (2021): How true is media reporting? Of bad practices and ignorance in public communication. In: *Journalism Research*, 4(2), pp. 118-134.
- BULL, HANS PETER (2023): Öffentlichkeit und öffentliche Meinung heute. Zur Volks- und Staatswillensbildung in der pluralistischen Demokratie. In: BULL, HANS-PETER: *Demokratie und Rechtsstaat in der Diskussion*. Tübingen: Mohr Siebeck, pp. 101-177.
- BÜSCHER, GUDRUN; DEBES, MARTIN (2022): Braucht Deutschland ARD und ZDF? In: *Hamburger Abendblatt*, dated 4 November 2022, p. 24.
- DI LORENZO, GIOVANNI (2022): Wir brauchen jetzt Mut. In: *Der Tagesspiegel*, dated 12 November 2022, p. 21.
- FISCHER, STEFAN (2023): Joachim Knuth: NDR-Intendant, dem die Belegschaft die Meinung sagt. In: *Süddeutsche Zeitung*, dated 5 April 2023, p. 4.
- GRABENWARTER, CHRISTOPH (2018): Art. 5 Abs. 1, 2 GG. In: DÜRIG, GÜNTER; HERZOG, ROMAN; SCHOLZ, RUPERT (eds.): *Grundgesetz. Kommentar*. 85. Lieferung. Munich: C. H. Beck.
- HAIDER, LARS (2022): Revolution statt Reform. ARD und ZDF müssen radikal umbauen, damit sie noch eine Zukunft haben. In: *Hamburger Abendblatt*, dated 4 November 2022, p. 2.
- HULVERSCHEIDT, CLAUDIUS; TIESCHKY, CLAUDIA (2022): »Eine vertane Chance«. Wie Politik und Intendanten auf Tom Buhrows plötzliche Reformpläne reagieren. In: *Süddeutsche Zeitung*, dated 4 November 2022, p. 18.
- KEIM, WALTHER (1992): »Bericht aus Bonn« – Anmerkungen zum Erscheinungsbild und zur Produktionsrealität eines Nachrichtenmagazins.

- In: WITTKÄMPER, GERHARD W. (ed.): *Medien und Politik*. Darmstadt: Wissenschaftliche Buchgesellschaft, pp. 120-130.
- LUHMANN, NIKLAS (1964/1999): *Funktionen und Folgen formaler Organisation*. Berlin: Duncker & Humblot.
- MEINEL, FLORIAN (2023): Neutrale Politik. In: *Merkur* 887 (April).
- MISCHKE, JOACHIM (2022): Dr. Buhrow und Mr. Tom. In: *Hamburger Abendblatt*, dated 11 November 2022, p. 15.
- NOWOTNY, FRIEDRICH (1992): Politik und öffentlich-rechtlicher Rundfunk – Die Sicht des Intendanten. In: WITTKÄMPER, GERHARD W. (ed.): *Medien und Politik*. Darmstadt: Wissenschaftliche Buchgesellschaft. pp. 99-111.
- REIMERS, STEPHAN; CYRIAX, HANS-ULRICH; BRAUCK, MELANIE; MIELKE, PHELINA; PROX, HENNING; RISSLER, DAGMAR (2023): *Klimabericht. Analyse von Unternehmenskultur und Betriebsklima im Norddeutschen Rundfunk*. März 2023. Hamburg: Norddeutscher Rundfunk, Unternehmenskommunikation.
- RIDDER, HANS-GERD; SCHIRMER, FRANK: Führung. In: BLANKE, BERNHARD; NULLMEIER, FRANK; REICHARD, CHRISTOPH; WEWER, GÖTTRIK (eds.) (2011): *Handbuch zur Verwaltungsreform*. 4th edition. Wiesbaden: vs Verlag für Sozialwissenschaften. pp. 206-217.
- SCHRIDDE, HENNING (2011): Change Management. In: BLANKE, BERNHARD; NULLMEINER, FRANK; REICHARD, CHRISTOPH; WEWER, GÖTTRIK (eds.): *Handbuch zur Verwaltungsreform*. 4th edition. Wiesbaden: vs Verlag für Sozialwissenschaften. pp. 279-291.
- TIESCHKY, CLAUDIA (2023): Vorsätzlich beschädigt. In: *Süddeutsche Zeitung*, dated 29./30 April 2023, p. 44.
- WINKLER, WILLI (2022): Wer ist diese Person? In: *Süddeutsche Zeitung*, dated 4 November 2022, p. 18.