Contextual Interpretation

A. Definition and purposes of Contextual Interpretation

1. It is obvious that legal acts shall be executed as legislators intended them to be. But it’s not always clear that only one result can derive by interpreting a statute. Actually it is rare that a norm can only have one meaning (plain and explicit). The text itself is capable of more than one sensible content. This actually poses a great threat towards the legal certainty because in order for a statute to be implied, it has to be minimized to a single, but yet complete meaning.

This being the case in every single legal system in the world, it is not hard to imagine that the ECJ’s task to imply the EU Law within the Member States is far more difficult since it has to overcome severe interpretation barriers such as different languages and legal systems.

2. Contextual interpretation is a form of statutory interpretation widely used by the ECJ to override these types of problems. It is aimed on finding the correct and accurate meaning of a norm in accordance with the general framework it belongs in, or better: “involves placing the provision in issue within its context and interpreting it in relation to other provisions” of the EU law. In other words according to the Contextual interpretation a statute should not be perceived as a single abstract but as an integral part of an organic whole.

3. The graphic example is Commonwealth v. Bralley case which took place in one of the US courts, nevertheless, might help to understand general idea of contextual interpretation. The statute provided that “no person shall be allowed to be a manufacturer of any spirituous or intoxicating liquors for sale, or a common seller thereof, without being duly appointed or authorized…” The controversy was about the word “thereof”. It meant “of liquors manufactured by the defendant” whereas the defendant insisted that the statute prohibited only manufacturers from selling or being common sellers of liquor. In such case only context from another clause of the section clarified that not only manufacturers but all persons were prohibited from selling liquor without authorization. Here the contextual meaning is the proper one because the literal meaning does not harmonize with another part of the statute.

B. Contextual interpretation in ECJ’s judgments

4. Legal acts often become outdated because of rapid changes in the world. There are brand new relations between subjects of law which have not been settled with all legal acts. In these cases we are talking about gaps (lacunae) in law. These have to be filled in by the judges, what is the fastest and most up-to-date way. These how the courts face with interpretation.

Understanding the meaning of provision (or legal norm) according to its purposes helps to apply it in a right way. That is why this process is very important in lawyers’ work and especially ECJ’s functioning.

5. In its expressions and explanations ECJ often uses contextual approach.

For example, “the context of all the provisions establishing a common organisation of the market” in case 190/73, Van Haaster. Or “the general scheme of the Treaty as a whole” in cases 2 & 3/62, Gingerbread case. As well as “one must have regard to the whole scheme of the Treaty no less than to its specific provisions” in case 22/70, ERTA case. Also “the context of the Treaty” in case 23/75, Rey Soda; and “article [31EC] … must be considered in its context in relation to the other paragraphs of the same article and in its place in the general scheme of the Treaty” in case 59/75, Manghera.

Some authors note that judgments of the ECJ “abound with references” concerning contextual interpretation. But still, it is imperative to note that no single method of interpretation is in the ascendancy as far as the ECJ is concerned. A classic illustration is found in Case 6/72, Continental Can, where the ECJ stated that: in order to answer this question (whether Article [82]EC applies to changes in the structure of an undertaking) one has to go back to the context, general scheme and wording of Article [82], as well as to the system and objectives of the Treaty. Thus, literal, contextual and teleological approaches are here all mixed together to enable the Court to reach its landmark decision on the full scope of Article 82.