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Abstract:

In common law there is a legal institution called “res ipsa loquitur”. Although some say it is no more than a convenient phrase, many argue it is fully developed legal doctrine of great meaning and influence. Both sides of the dispute admit, that a judgment of the Court of Exchequer rendered by Charles Edward Pollock from 1863 gave birth to this legal institution.

In Polish law there have been attempts to implement the doctrine of res ipsa loquitur. These attempts failed. Nevertheless a similar legal institution of unknown provenance is existing also in Polish law. It is called “prima facie proof” and can be compared to the German doctrine of “der Anscheinsbeweis”. This “prima facie proof” doctrine emerged in the late 50’s of the XXth century. It sounds useful to analyze its older cousin. Maybe they have more in common, than is commonly acknowledged or perceived. But maybe they are no more than a rather loose acquaintance. In either case it seems interesting and important to study this foreign institution of res ipsa loquitur in order to gain a better understanding of the own legal system. For the mentioned reasons the doctrine shall be given a detailed analysis.

After a short introduction, in the first part of the article the creation and the development of the doctrine is analyzed. The basic cases associated with the doctrine, which are well established, are presented. Then, the evolution of the doctrine is traced. The second part deals with the legal concepts of the institution of res ipsa loquitur. As the doctrine is applied in many common law jurisdictions in different ways, a generalist approach is being chosen. The most common views are presented. A third part deals with the specific requirements, that are demanded, in order to apply the res ipsa loquitur doctrine. A fourth part concerns the scope of application of the doctrine. An overview of different jurisdictions and cases is provided.

At the end some conclusions are made. The question is raised once again, whether the res ipsa loquitur doctrine may or should be widely applied in Polish law. A short resume of the institution in both legal systems accompanied by examples of typical applications of the institution shows, that in both systems the judge could often come to the same conclusion, nevertheless on different grounds. While in common law res ipsa loquitur permits the judge to draw a conclusion on the basis of mere evaluation of evidence, in Polish law a particular legal regulation is required. Interestingly in many common cases these particular regulations exist. Meanwhile the doctrine of res ipsa loquitur itself would be hardly applicable in Polish law. In most cases it would probably be deemed an abuse of discretion. The Polish legal system is different than the common law. A different standard of evidence is being used. While common law is satisfied with a preponderance of probability, the Polish legal system demands certainty. For this and other reasons there is no space for the doctrine of res ipsa loquitur in the contemporary Polish law.