

HANNA PALUSZKIEWICZ

**Judicial cognition in brief. The judicial scene
after amendments to the Code of Criminal Procedure**

Summary

This paper, in response to the amendments to the law of criminal procedure, relates to the ideas of prof. Maciej Zieliński (*Poznanie sądowe a poznanie naukowe*, Poznań 1979). Reshaped by the new provisions, the normative model of judicial cognition in criminal matters is based on principles of accusatorial, adversarial and material truth principles, and emphasizes the obligations of the parties with respect to evidentiary activity, while at the same time restricting the powers of the court related to evidentiary initiative. The subject matter of this cognition is a fragment of reality and its boundaries are set by both parties to the trial (fact-finders) and importantly, not by the prosecutor only.

The judicial cognition model has two versions: one for a confrontational and another for a consensual trial. The former is a cognitive process whereby opposing arguments of trial parties clash in the adversarial trial system at a hearing. In this version, the court as a determinative fact-finder assesses arguments and assertions about the examined fragment of reality proffered by each of the opposing trial parties. In the latter, consensual model, the court is a determinative fact-finder too, but the cognitive process is limited to the court's learning the respective contentions by the trial parties concerning the fragment of reality indicated by them. This is a type of judicial cognition whereby factual findings (assertions about a given segment of reality), originating with both parties (their joint ones), are adopted by a non-participatory court as a basis for a decision. Consensual decision-making is founded therefore not on cognition results but on the consensus of the parties on essential questions concerning the sentence, and the circumstances of the commission of the offence. In this dominating model of judicial cognition, after the criminal procedure law is amended, a fact described in a legitimate assertion (not necessarily reflecting the truth per se) will be considered as subsisting and be included in the factual grounds of the judgment.

Keywords: cognitive process in the criminal trial – model of judicial cognition – a determinative fact-finder – a confrontational criminal trial – a consensual criminal trial