

Role of Geographical Tracking by G.P.S Technology in Criminal Evidence

By

Ahmed Jabbar Hussein

College of Law, University of Misan/ ministry of Higher Education and Scientific Research,
Iraq

Email: aa1983jjhh@gmail.com

Hayder Ars Afan

College of Law, University of Misan/ ministry of Higher Education and Scientific Research,
Iraq

Email: ms.haidr2015@uomisan.edu.iq

Abstract.

The system of geographical tracking by the technology (G.P.S.) is one of the modern applications of evidence in the field of criminal proof, through this technology we can monitor dangerous people and accused of certain crimes, as it is one of the evidence that helps the criminal judge to take it according to the discretionary authority granted in the field of admissibility of evidence, whether direct or indirect.

Keywords: Geographical Tracking, Criminal Proof, Evidence.

1. Introduction

The geographical tracking of the accused by G.P.S. technology is an important digital phenomenon that, thanks to the enormous technological revolution that the world is going through at the moment, has spread among all individuals. It can be used free of charge by smartphone or by car, through which we can determine the geographical location of individuals and objects and therefore is one of the most important means of surveillance of individuals or of the evidence and the UAE in the field of criminal proof in the event of a certain crime, and this has made it one of the modern applications of evidence in the field of criminal proof, which requires the statement of the concept of geographical tracking of the accused, As well as a statement of the importance and role of its role in the field of criminal proof, where we will divide the research plan into a requirement and two sections we deal in the first section with the definition of geographical tracking and the importance of while in the second section we will address its role in the field of criminal proof.

2. Concept of Geographical Tracking by (G.P.S.) Technology

In order to take note of the subject of geographical tracing as one of the applications of evidence in the investigation and collection of evidence, we must indicate the definition and importance in the first section and the extent of authenticity in the criminal evidence in the second section, as follows:

2.1. Definition of tracking device and importance

First: Definition of geographical tracking of the accused

Geo-tracking is defined as "a series of satellites that transmit information that allows users of the G.P.S. device to locate the device anywhere on Earth (Saleh, 2022, p. 15), and this system takes from outer space as its base where it provides free services to all its users

continuously and without interruption, and through which time and traffic are determined where anyone who has a GPS receiver can get information that identifies him. Location and timing whether night or day and anywhere in the world, regardless of weather conditions.

The geo-tracking feature enables to monitor and know the movements of the person or anything with or without the knowledge of the person concerned, through dynamic tracking via mobile phone or piece (G.P.S.) placed in the car or in a computer, bag or clothes, where the data is transferred from the location sent by the satellites to the phone by the connecting antenna which in turn sends it to the X telecom operator, which are mobile line companies, where the GPS consists of Satellites, control stations, and user devices (Saeed, link, p. 7).

In some Arab legislations, we find a definition of this technique, where article (12/a/2) and article (51) of the Jordanian Telecommunications Law No. 13 of 1995 and its amendments where it was defined as "the service of tracking and determining the geographical location of objects such as cars, containers, equipment and other objects, including all works related to the monitoring and control of this service and the transmission of evidence by means of communications" and we did not find in the Iraqi Wireless Communications Law No. 159 of 1980 any mention of this technology because the law is old, Also, even in the proposal of the Information Systems Law before the Iraqi Council of Representatives, any mention of this technique and above, we propose to the Iraqi legislator to know this technique clearly and accurately because the technology (G.P.S.) is one of the modern applications that are used by most people at the momen.

Second: Importance of geographical tracking in criminal proof

The Geographical Tracking System (G.P.S.) plays an important role in the criminal field, as it can perform many tasks, including the implementation of criminal penalties for persons sentenced to police surveillance, which is considered one of the penalties restricting freedom, as the convicted person is bound by a number of restrictions and procedures that do not lose his freedom after the execution of the sentence, and those restrictions are represented in informing the police of his place of residence or any change in it, and not to go to some places, knowing that the situation in electronic surveillance is different from Police surveillance where in the first is permanent, while in the second it is intermittent (Al-Barmawi, 2004, p. 352), and the technology of geographical tracking has an important role in providing protection to society from persons accused of serious crimes, especially sexual ones, where the control of criminals with these crimes by means of the technique (G.P.S.) is an important necessity in protecting society from the perpetrators of these crimes (Megan A. Janicki, 2007, link)

There is also an important role for geographical tracking by G.P.S technology in criminal or civil litigation, as the experiences in the United States of America on this are many, including the case of a person named (Black Smith), who filed a lawsuit against the phone company (Pasvica Bell) where he works after the company terminated a currency after he stole the service car, and it was stated in his claim that the car was stolen from him after the fall of his keys during the removal of some equipment from the back From the car, however, G.P.S. technology showed that the car was parked during the robbery and as a result the company terminated Smith's services after failing to protect the company's assets as well as falsely claiming about his keys at the time of the theft (Smith v Pac, 2008, link).

There is an important role for geographical tracking by the G.P.S technology in helping members of the judicial police to know the movements of the accused through surveillance through this technique, where the members of the judicial control monitor the accused physically to verify the information that has reached them about a crime and take into account

in the secret surveillance and caution so that the person under surveillance does not feel it (Mahdi, 2019, p. 319), noting that the physical surveillance carried out by members of the judicial control does not raise a fear related to the violation of privacy of the person under surveillance, because it is usually carried out in public places, but more than that the person concerned may be aware of it, unlike surveillance by geographical tracking it is carried out more confidentially by placing a chip on the device or car of the person concerned without knowing about it and thus this technique is described as More invasion of privacy than physical surveillance.

2.2. The Role of G.P.S. Geotracing in Criminal Evidence

The investigative authorities do not have any direct action or conduct in which the freedoms of individuals are not provided for in the law, even if this procedure leads to the disclosure of the truth, as taking any action requires legislative intervention as the evidence is related to rights and freedoms (Shamseddine, 2017). p. 359). Because this is in accordance with the principle of procedural legality because the procedural system works to achieve the interest of the state in revealing the truth in order to recognize its right to punishment at the expense of the personal freedom of the accused, then the interest of the state has overshadowed the interest of individuals, and then the matter has departed from the required balance between the interest of the individual and the interest of society, which requires effective and rapid action and that legislative regulation is very important because procedural legitimacy is a tool regulating freedoms and protecting the rights of The human being with the aim of reconciling criminal justice with respect for personal freedom (Merhi, 2016, p. 16).

However, there are those who believe that the procedures for collecting evidence are provided, for example (Al-Gharib, 1997, p. 792), and thus have the power to investigate any action that would lead to the truth, detect the crime and identify the perpetrators.

Thus, the technique of geographical tracking cannot be used without stipulating it in laws out of respect for the principle of procedural legality (Mahdi, p. 45).

Thus, the French legislator argued that the procedure of geographical tracking of the accused is invalid if it is based on an order issued by the Public Prosecution, and article (81) of the French Code of Criminal Procedure allowed the judge to carry out all acts that help him to express the truth, and this formula is so broad that it is not inferred from it to give permission to use the G.P.S technique in the surveillance of people. Accordingly, the French government hastened to discuss the draft law on geographical location in the Council of Ministers on December 23, 2013, which was referred to the Constitutional Council by a group of deputies for prior control to examine the rights of defense provided for in article (230-40) of the French Code of Criminal Procedure with the provisions of Article I of the proposed law, and indeed Law No. (2014-372) was issued on March 28, 2014 containing the determination of geographical location by technical means after the constitutional review. (Cons . Const Link, 2014).

Thus, the French legislator has expressly provided for the procedures governing the geographical tracing of the accused by means of G.P.S. technology by the above-mentioned law.

While the Egyptian legislator did not stipulate in the Egyptian Information Technology Law No. (175 of 2018) the use of G.P.S. technology as the French legislator did. (Saleh, 2022, p. 52) The same is the case in Iraqi legislation, the draft cybercrime law for the year 2020 and the law on electronic signature and electronic transactions No. (78 of 2012) did not explicitly

stipulate the use of G.P.S technology as a means of inference against the accused.

There are those who believe that scientific evidence based on the use of technical methods that have been newly discovered in proving the crime and attributing it to the perpetrator is considered admissible evidence and does not accept by its nature the subjection of the criminal judge to any restrictions regarding it, (Al-Gharib, p. 1238) but should leave the matter of its discretion to the judge according to his emotional conviction, because it often conflicts with the evidence of the other criminal case, in addition to the conflicting opinions of specialists on it.

On this basis, the evidence resulting from the G.P.S. geographical tracing does not have absolute authority, but rather relative authority, since it is subject to the discretion of the judge, and this is what has been confirmed to the French and Egyptian legislators in the Code of Criminal Procedure that crimes are proven by all means of proof and judged by the judge according to his own conviction.

Also, the Iraqi legislator in the Code of Criminal Procedure has left the judge free to form his conviction and appreciation of the evidence and has not interfered in drawing the method practiced by the judge in his mental activity to reach this conviction.

On the basis of the foregoing, it is clear to us that evidence based on geographical tracing is considered indirect evidence and is such evidence that does not conclusive in proving, but rather makes the fact probable, because if it is fit for indictment, it is not suitable for sentencing guilt, since the use of geographical tracing is not without danger, because the criminal judge has wide freedom to conclude, and this conclusion varies from judge to judge, a judge may see it as a reliable presumption in evidence, and considers it to be a reliable presumption of evidence. Another is a synonym or evidence that serves to be supportive of other evidence. (Bakr, 1996, p. 18)

It is worth mentioning that the criminal justice in Iraq did not rely in its decisions on this technique and did not build a position towards whether it is an indirect evidence of evidence, whether as a judicial presumption or as evidence, and in turn we encourage the police services to benefit from scientific and technological progress, including the use of modern means to track down accused and suspects. Investigation into the use of modern scientific means produced by scientific progress, including the G.P.S. geo-tracking technology.

Conclusion

At the end of this research we came up with a series of conclusions and proposals, which we presented as follows:

Results

1- We note that most legislations do not provide a clear and accurate definition of the concept of geographical tracking by G.P.S. technology, despite the importance of this technology at the present time due to the electronic and technological revolution witnessed by the world.

2- Geographical tracking by the technology (G.P.S.) is one of the modern means that help to monitor the accused away from the traditional surveillance procedures carried out by police officers

- 3 - The use of geographical tracking technology plays an important role in criminal proof, especially in the field of investigation and collection of evidence as it helps to uncover the circumstances of some complex and mysterious crimes.
4. Geographical tracing is one of the means of proof of the offender to which the criminal judge has the right to refer because of his freedom to accept all evidence of the offender in accordance with the authority granted to him to take direct and indirect evidence.
- 5 - The technique of geographical tracking in the field of monitoring the accused is described as more a violation of privacy than physical surveillance because it is carried out more confidentially by placing a chip on the device or car of the person concerned without knowledge of it, and thus differs from what the police do in the case of monitoring the accused because the surveillance procedures are usually in public places and the accused is often aware of them.
- 6 - The authority of geographical tracking in the field of evidence of the offender can be counted as evidence that can be relied on in tracking the accused and bringing the charge, but it is not suitable for a unit to establish evidence against the accused to issue a verdict of conviction against him because the sentences in the field of conviction must be based on certainty and certainty and not on the basis of doubt and probability.

Recommendation

- 1- We propose to the competent authorities, whether judicial or investigative, to adopt the technology of geographical tracking by the G.P.S. device, as it is one of the modern means used in the field of tracking criminals and revealing their identities, especially since the technology is currently present in most persons as well as the state and its official institutions.
- 2- We propose to the Iraqi legislator to define this technique clearly and accurately as the technology (G.P.S.) is one of the modern applications that are used by most people at the moment, especially in the proposal of the Information Systems Law presented to the Iraqi Council of Representatives.
- 3 - Introducing police officers and investigative bodies intensive courses in order to use the technique of geographical tracking to contribute to the tracking of accused, provided that it does not affect the personal rights of individuals and that the use of this technique is in accordance with the principle of procedural legality.

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