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Criminal Penalties for GPS Tracking: A Case Study on Taiwan High Court Judgment No. 100-Shangyi-Tzi-2407

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Abstract

Global Position System (GPS) technology has been widely used in daily life. Both private individuals and government agencies take it as a tool to collect criminal evidence. In spite of its danger of infringing privacy, previous studies had rarely analyzed whether using GPS technology for private investigation purpose would constitute a crime.

In a much-debated judgment by the Taiwan High Court, it held that for the purpose of investigating an adultery, a husband using GPS to position the location of his wife's vehicle only violated Article 315-1 of Criminal Code, but did not violate Article 24 of Communication Security and Surveillance Act. This opinion has received a lot of responses and discussions among practitioners. This Article shows that the judgment has correctly denied the allegation that private conduct can constitute an unlawful communication surveillance under Communication Security and Surveillance Act. Noticeably, the judgment considered that the conduct still violates Article 315-1 of Criminal Code. But this decision unduly expanded the con-

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cept of “non-public activities”, which contravenes the principle of *Nulla poena sine lege stricta*. The practitioners should also pay attention, in the foreseeable future, to the effect that GPS tracking and its application in Article 41 of the new Personal Information Protection Act.

Keywords: Information Privacy, GPS Tracking, Vehicle Location, Article 315-1 of Criminal Code, Article 24 of Communication Security and Surveillance Act, Article 41 of Personal Information Protection Act, Private Evidential Investigation