

**3º Simpósio Internacional – EJUD 8**

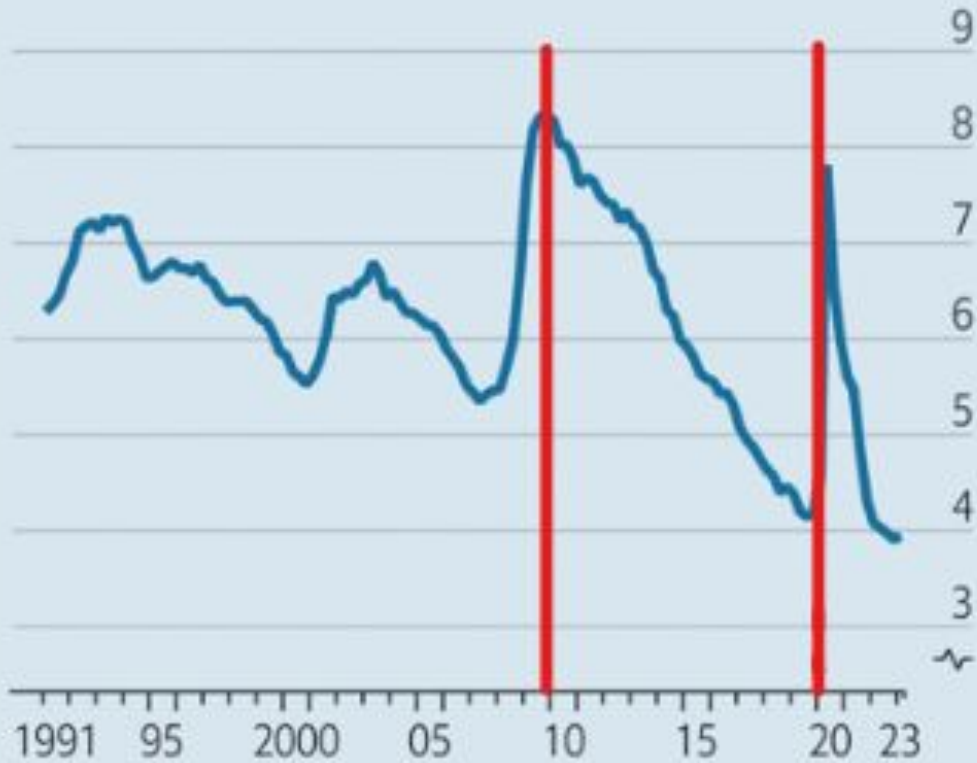
**As transformações tecnológicas e o  
Direito do Trabalho**

Estêvão Mallet

## Robot-resistant

G7 countries, unemployment rate, %

2



Source: OECD

The Economist

# Código do Trabalho de Portugal

“Art. 12º

Presunção de contrato de trabalho

1 - Presume-se a existência de contrato de trabalho quando, na relação entre a pessoa que presta uma actividade e outra ou outras que dela beneficiam, se verificarem algumas das seguintes características:

a) A **actividade** seja **realizada em local pertencente ao seu beneficiário** ou por ele determinado;

## CLT

“§ 1º A hora do trabalho noturno será computada como de 52 minutos e 30 segundos.”

# Lei Argentina n. 27.555/2020

Artículo 17.- **Prestaciones transnacionales.** Cuando se trate de prestaciones transnacionales de teletrabajo, se aplicará al contrato de trabajo respectivo la **ley del lugar de ejecución de las tareas** o **la ley del domicilio del empleador**, según sea **más favorable** para la persona que trabaja.

## Court of Appeals for the Eleventh Circuit

*“...we consider whether the testimony at trial of witnesses by two way video teleconference from Australia violated the Defendants’ Sixth Amendment right to confrontation, concluding that it did...Here, **the Defendants were given no such opportunity for physical confrontation with the Australian witnesses, and therefore, the deposition cases are inapposite...**providing the fact-finder with crucial prosecution evidence and expeditious resolution of the case, on the record before us, are not important public policies that justify the denial of actual confrontation between witness and defendant”*  
*(United States v. Yates, n. 02-13654, 438 F.3d 1307)*

# Supreme Court of the United States.

## Carpenter v. United States (16-402)

*“1. The Government’s acquisition of Carpenter’s cell-site records was a Fourth Amendment search...*

*(c) Tracking a person’s past movements through CSLI partakes of many of the qualities of GPS monitoring considered in Jones—it is detailed, encyclopedic, and effortlessly compiled. At the same time, however, the fact that the individual continuously reveals his location to his wireless carrier implicates the third-party principle of Smith and Miller”.*

**Supreme Judicial Court.**  
**Commonwealth of Massachusetts.**

*“The Commonwealth's interest in protecting the public health during the COVID-19 pandemic is significant and, combined with its interest in the timely disposition of a case, would, in many instances, outweigh the defendant's interest in an in-person hearing...a virtual motion to suppress hearing is not a per se violation of the defendant's right to be present in the midst of the COVID-19 pandemic...we recognized the defendant's right to be present as a corollary right to the right to confrontation...we did not conclude that a virtual court proceeding is a per se violation of a defendant's right to be present...the right to be present under rule 18 (a) does not prohibit a virtual hearing in certain circumstances.”* (John W. Vazquez Diaz vs. Commonwealth, SJC-13009).



# Tribunal de Justiça da União Europeia.

Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden

OQ v Land Hesse (Case C-634/21)

## Questions referred

Is Article 22(1) of Regulation (EU) 2016/679 to be interpreted as meaning that the **automated establishment of a probability** value concerning the ability of a data subject to service a loan in the future already **constitutes a decision based solely on automated processing**, including profiling, which produces legal effects concerning the data subject or similarly significantly affects him or her, where that value, determined by means of personal data of the data subject, is transmitted by the controller to a third-party controller and the latter draws strongly on that value for its decision on the establishment, implementation or termination of a contractual relationship with the data subject?

If Question 1 is answered in the negative, are Articles 6(1) and 22 of Regulation (EU) 2016/679 to be interpreted as precluding national legislation under which the use of a probability value – *in casu*, in relation to a natural person's ability and willingness to pay, in the case where information about claims against that person is taken into account – regarding specific future behaviour of a natural person for the purpose of deciding on the establishment, implementation or termination of a contractual relationship with that person (scoring) is permissible only if certain further conditions, which are set out in more detail in the grounds of the request for a preliminary ruling, are met?

## Tribunal Regional do Trabalho da 2ª Região.

“REVELIA. JUSTIFICATIVA DE **ERRO DE CÓPIA DO LINK** PELA PRÓPRIA PARTE. Ausente a reclamada à audiência de instrução, a D. Magistrada deferiu prazo para justificativa de não ingresso na sessão (fls. 496). Contudo a reclamada admitiu expressamente que **não conseguiu acesso por haver copiado errado o link** (fls. 501). A conclusão é que não houve dificuldade técnica, mas erro. Ainda que o link fosse informado com um mês de antecedência, tal tipo de erro teria causado a mesma consequência. Portanto, correta a decretação da revelia e a confissão quanto à matéria fática, conforme decidido às fls. 554” (TRT 2ª Região, 7ª Turma, Autos nº 1000700-98.2021.5.02.0241, Rel. Juiz Gabriel Lopes Coutinho Filho,

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## **TRT-ES suspende atendimento e serviços jurídicos por mais dois dias após ataque hacker**

Já são quatro dias de sessões trabalhistas suspensas tanto na sede de Vitória quanto nas Varas do interior do Espírito Santo