**Case Information**

1. **Case Title:** Maria Helena Jurado Melillo v. Google Internet Brazil Ltda.
2. **Meta Data:**
3. **Case Number**: Apelação Cível (Civil Appeal) nº 0160205-48.2010.8.26.0100;
4. **Corresponding Law Reference**: Brazil, Appellate Court of São Paulo (TJSP), Civil Appeal nº 0160205-48.2010.8.26.0100. Justice Rapporteur: José Aparício Coelho Prado Neto. Federal Online Gazette (DJe) publication on 05-20-2016;
5. **Date of Decision**: 04-05-2016;
6. **Featured Case**: n/a;
7. **Region**: Latin-America and Caribbean;
8. **Country**: Brazil;
9. **Mode of Expression**: Electronic/Internet-based communication;
10. **Judicial Body**: Appellate Court of São Paulo (TJSP);
11. **Type of Law**: Civil Law; Constitutional Law;
12. **Main Theme**: Privacy, Data Protection and Retention; Content Regulation/Censorship;
13. **Outcome**: Lower Court not affirmed; Right to be forgotten not affirmed;
14. **Status**: Closed;
15. **Tags**: Right to be forgotten; Search engines;
16. **Excerpt**:

**Case Tracking - url?**

<https://esaj.tjsp.jus.br/cposg/search.do?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=0160205-48.2010&foroNumeroUnificado=0100&dePesquisaNuUnificado=0160205-48.2010.8.26.0100&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO#?cdDocumento=19>

**Case Analysis**

1. **Summary and Outcome**
	1. **Summary**: Maria Helena Melillo filed a lawsuit against Google Brazil Internet Ltda. to request the suppression of search results related to her stage name “Meg Melillo”. Maria is an actress and model, and she brought the suit to the Lower Court of São Paulo claiming that her professional and personal life had been damaged due to pornographic related photos, videos and comments in Google’s search results. In a summary judgment, the Lower Court granted an interlocutory injunction, on the grounds that the right to be forgotten should prevail over the right to information in order to preserve personality rights, such as image, honor, intimacy, and privacy. The court sentenced Google to suppress from its search results the artistic name “Meg Melillo”, under the penalty of a daily fine of BRL1,000.00. Google appealed to the Appellate Court of São Paulo (TJSP).
	2. **Outcome**: The ninth chamber of civil procedure of the Appellate Court of São Paulo (TJSP) upheld the Appeal filed by Google. The Court stated that it is not possible to apply the right to be forgotten to the case because Maria Helena was not able to demonstrate that she regretted “past behaviors related to pornography” which are reflected in the content she wanted to exclude from Google’s search results.
2. **Facts**
	1. **Facts giving rise to cause of action**

Maria Helena Melillo was a model and professional actress that used the artistic name “Meg Melillo”. Maria claimed that content related to her artistic name was causing damage to her personal and professional life because it was associated with pornographic photos, videos and comments and she was often misjudged for “prostitute girls”. She argued that “even if she had traded her body in the past, she would have the right to forget the past and live worthily”.

Maria filed, then, a lawsuit to require Google to block any results associated with the name “Meg Melillo”.

* 1. **Cause of action or law at issue**

Maria argued that the search engine Google violated her right to human dignity by providing pornographic content related to her artistic name.

* 1. **Procedural history**

 In the first instance, an interlocutory injunction was granted to affirm the right to be forgotten. An interlocutory injunction can be granted in a summary judgment if it meets the following requirements: (i) probability of the right, and (ii) danger of damage.The final decision confirmed the injunction.After analyzing the case, the ninth chamber of civil procedure of the Appellate Court of São Paulo (TJSP) upheld the Appeal filed by Google, according to the vote of the Justice Rapporteur José Aparício Coelho Prado Neto, and dismissed the right to be forgotten that was initially granted to Maria in the first instance ruling.

1. **Decision Overview**
	1. **Deciding judge & type of opinion**

In the Lower Court, the claim was upheld on the grounds that the right to be forgotten should prevail over the right to information to preserve personality rights, such as image, honor, intimacy and privacy. Google was sentenced to suppress the artistic name “Meg Melillo” from its search results, under the penalty of a daily fine of BRL1,000.00. As a result, Google appealed to the Appellate Court of São Paulo (TJSP).

The Appeal was analyzed by Justice Rapporteur José Aparício Coelho Prado Neto within the ninth chamber of civil procedure of the Appellate Court of São Paulo (TJSP), who based his decision on doctrinaire understandings on the right to be forgotten.

* 1. **Issue statement**

The main issue before the court was whether internet users’ right to be forgotten should be protected and search engine providers should be held liable for the content of search results containing the plaintiff's name.

In this case, the court should decide if Google must remove the plaintiffs’ name from search results.

* 1. **Parties’ arguments**

Maria Helena pleaded that she faced problems in her professional and personal life due to the search results linked to her artistic name “Meg Melillo”. According to her, search results with the artistic name leaded to pornographic photos, videos and comments and made her be misjudged for “prostitute girls”. She also reasoned that those problems intensified after she won a famous reality show in Brazil in 2011 (“Big Brother Brazil”) and that, even though she commercialized her body in the past, she had the right to forget these previous events and live with dignity.

Google argued that (i) it had no responsibility, as a search engine, to remove from the Internet unwanted content about the past of a user; (ii) it had also no duty to locate search results without a clear indication of the content supposed to be removed, given the great number of pages and videos existing on the Internet and (iii) the Brazilian Superior Court of Justice (“STJ”) had repeatedly ruled that search engines were not required to suppress search results related to a particular term or expression, even when the URL of the page is indicated.

* 1. **Court’s rulings & legal grounds**

According to the Justice Rapporteur José Aparício Coelho Prado Neto, the right to be forgotten could be defined as “the right a user has to have erased, suppressed or blocked a personal data or fact due to the passage of time and because it violates his fundamental rights''. He also stated that “the right to be forgotten is directly related to privacy, allowing citizens to remain alone and anonymous”.

The rapporteur added a Constitutional Law quote that states that “Informing is not to annihilate someone forever or punish them publicly and indefinitely” and reinforces the right to human dignity. Despite that, the rapporteur argued that it would not be possible to apply the right to be forgotten in the concrete case because the plaintiff, by her own will, never ceased to associate her image with pornography and eroticism. To emphasize his reasoning, judge Prado Neto pointed out that) after seeking the right to be forgotten, she participated in a famous Brazilian reality show (“Big Brother Brazil”), where she won the final prize of BRL 1,500,000.00. He also added that the image the plaintiff claims to be forgotten could possibly have led her to participate in this TV show. Lastly, he contended that Maria Helena did not seem concerned with her privacy, since she, according to his opinion, “left her breasts exposed to millions of viewers”, had sexual intercourse in the TV show, and posed for *Playboy* magazine.

The Appellate Court did not cite freedom of expression as a legal basis to its ruling.

* 1. **Concluding statement**

Given the arguments presented, the Appellate Court of São Paulo granted the Appeal filed by Google and dismissed the first instance decision. The Court based its decision on the fact that the plaintiff could not demonstrate that she was concerned with her privacy and keeping herself in anonymity. The Court concluded, then, that it would not be possible to apply the right to be forgotten because Maria Helena Melillo did not regret the past that she wanted to exclude from Google’s search results, as “she kept associating herself with pornographic content”.

* 1. **Dissenting or Concurring opinions**

N/A

**Direction**

1. **Decision Direction**: Mixed outcome
2. **Information**: Although the Court’s ruling did not grant the right to be forgotten or an order to exclude users' expression, it refrains from using free speech as a reason or any other right, including the right to information. It grounded its decision not through the Brazilian legal system, such as Brazil’s Internet Bill of Rights or the Federal Constitution, but based on the user's regret or not about the exposed content. The Court understood that the right to privacy should not be granted, however it did not present what fundamental right should prevail over it and what criteria were applied. It also seemed to conduct a moral judgment over the plaintiff’s life.

**Perspective**

1. **Global Perspective:**
2. **International, Regional, and National Laws or Cases**

N/A

1. **Other National Standards, Law or Jurisprudence**
2. **General Notes**:

**Significance**

1. **Case significance**

Considering it is a decision of the Appellate Court of Sao Paulo, its effects are projected only in this region and other courts are not bound to follow it.

1. **Precedential Effect**

The decision establishes a persuasive precedent within its jurisdiction.

1. Persuasive Effect
2. Related Cases
3. Additional Citations

**Documents**

1. Official Case Documents

<https://juristas.com.br/wp-content/uploads/2018/01/20160000253986.pdf>

1. Amicus Briefs and Other Legal Authorities
2. Reports, Analysis and News Articles
3. Relevant Materials in Foreign Languages