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pretense in their answers that the appeal is frivolous or purely dilatory.

ACCORDINGLY, respondent court's resolution dismissing petitioners' appeal is hereby set aside and the case is remanded to respondent court for prompt disposition of the appeal on its merits. Without costs.

*Makasiar, Esguerra, Muñoz Palma,* and *Martin, JJ.,* concur.

*Respondent court's resolution set aside and case remanded.*

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[No. L-37423. April 30, 1976]

**EN BANC**

VICENTE J. FRANCISCO, petitioner, *vs.* MEDIA ADVISORY COUNCIL, respondent.

ORIGINAL ACTION. Mandamus.

**SYNOPSIS**

Respondent Media Advisory Council, now inexistent, refused to allow the circulation of the August 1973 issue of the Lawyers Journal for lack of the necessary permit, a requirement imposed by Presidential Decree No. 191. In this mandamus proceeding, petitioner assailed the validity of such refusal contending that by its nature the Journal

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was not covered by said decree, and that to deny it the enjoyment of the benefits of the second-class mailing privilege would be violative of press freedom guaranteed not only by the 1935 Constitution but also by the 1973 Constitution.

After a hearing was had and additional pleadings relevant thereto were filed, counsel for petitioner filed a notice of withdrawal, the apparent basis being the decision reached by petitioner not to insist on its claim to enable the Lawyers Journal to be published. As petitioner Vicente J. Francisco died, so did the Lawyers Journal stopped its publication.

The Court dismissed the case for being moot and academic.

**SYLLABUS**
**of the Ruling of the Court**

1. MOOT CASE; MANDAMUS; CASE OF.– Where during the pendency of a case for the enforcement of the press freedom right guaranteed by the Constitution the petitioner died, and the publication of the legal periodical also ceased, the Court will not pass on the constitutional as well as legal questions raised therein and instead will dismiss the case for being moot and academic.

APPEARANCES OF COUNSEL

*Vicente J. Francisco* on his own behalf as petitioner.
*Antonio R. Tupaz* for respondent.

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## DECISION

FERNANDO, *Acting C.J.:*

What was assailed in this suit for mandamus filed by the late distinguished legal practitioner, Vicente J. Francisco, was the refusal of respondent Media Advisory Council, now no longer in existence, to allow the August 1973 issue of the Lawyers Journal to enjoy the benefits of the second-class mailing privilege as it lacked the necessary permit. As he pointed out in his petition: "The Lawyers Journal is virtually an institution in the legal profession. Its publication started as far back as the year 1934, or 39 years ago, so that it has been in operation since the American regime, through the Commonwealth period, on to this era of the Republic up to the present. By reason of its nature and as indicated by its name – 'Lawyers Journal,' that is, a journal for Lawyers – its contents are confined to decisions of the Supreme Court and other judicial proceedings, including arguments of counsel submitted to the said Court for its consideration in deciding cases pending therein, aside from articles on the law, legal developments and legal personalities written from the purely juridical angle, many of which are sent in by members of the Supreme Court and of Appeals and judges of the lower courts, and its (the Journal's) subscribers are solely lawyers, that is, members of the Bench and Bar."[1] It is not, therefore, covered by Presidential Decree No. 191 that imposed such a requirement. Independently of such argument, it was further asserted that to sustain such refusal of respondent would be violative of press freedom

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[1] Petition, par. 2

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vouchsafed not only by the 1935 Constitution but also by the 1973 Constitution.[2]

The Solicitor General was required to comment in our Resolution of September 18, 1973. Such a pleading was filed on September 24, 1973. It is the submission therein that the constitutionality of Proclamation No. 1081 need not be passed upon, the issue posed being susceptible to the correct answer in the interpretation to be accorded "mass media" in Presidential Decree No. 191. It refuted the contention of petitioner that the phrase refers to "media of communication addressed to the masses." The prayer is for the dismissal for lack of merit.

The case was set for hearing on September 26, 1973, and was duly heard on that date, with Attorney Francisco Soc Rodrigo appearing and arguing for petitioner, and Solicitor General Estelito P. Mendoza[3] for the respondent. There were in addition an exchange of additional pleadings filed on both sides in support respectively of the position taken by each. Subsequently, on November 13, 1973, came this notice of withdrawal of counsel on the part of Attorneys Francisco Soc Rodrigo as well as Francisco E. Rodrigo, Jr. It reads thus: "The undersigned hereby withdraw as counsel for the petitioner in the above-entitled case, due to a basic difference of opinion with the client in the prosecution of this case."[4]

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[2] According to Article III, Sec. 1, par. (8) of the 1935 Constitution: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." This provision was reiterated in Art. IV, Sec. 9 of the present Constitution.

[3] He was assisted by Assistant Solicitors General Hugo E. Gutierrez, Jr. and Vicente V. Mendoza and by Solicitor Reynato S. Puno.

[4] Notice of Withdrawal of Counsel dated November 13, 1973.

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While rather cryptic in character, the basis apparently was the decision reached by petitioner not to insist on its claim to enable the Lawyers Journal to be published. So it did transpire, issues up to May, 1974 having come out. Thereafter, its publication ceased, primarily for the reason that on July 19, 1974, petitioner Vicente J. Francisco passed away. Under the circumstances, with the death of petitioner and with the Lawyers Journal ceasing publication, this Court need not pass on the constitutional as well as legal question raised.

WHEREFORE, the case is dismissed for being moot and academic.

*Barredo, Makasiar,, Antonio, Esguerra, Muñoz Palma, Aquino*, and *Martin, JJ.*, concur.

*Castro, C.J.*, is on official leave.

*Concepcion Jr., J.*, did not take part.

*Case dismissed.*

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[No. L-37678. April 30, 1976]

SECOND DIVISION

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* RUSTICO ABAY, defendant-appellant.

PETITION FOR REVIEW of a decision of the Court of First Instance of Manila, Br. XV. Villasor, *J.*: