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REPORT

of the Committee on the Rules of Procedure,
the Verification of Credentials and Immunities

on the request for the waiver of
Mr Marco PANNELLA's parliamentary immunity

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At the sitting of 8 October 1990 the President of the European Parliament announced that he had received a request for the waiver of Mr Pannella's parliamentary immunity, forwarded by the Minister of Justice of the Italian Republic on 30 August 1990 at the request of the Florence Public Prosecutor, and that he had referred it to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, pursuant to Rule 5(1) of the Rules of Procedure,

At its meeting of 17 October 1990 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities appointed Mr Gil-Robles rapporteur.

At its meeting of 17 December 1990, following an initial exchange of views, the committee decided to ask the Minister of Justice of the Italian Republic for further information.

On 22 January and 17 July 1991, Mr Baron Crespo, the President of the European Parliament, sent two letters to this effect to the Italian Ministry of Justice. No reply has thus far been forthcoming.

At the meeting of 21 September 1992, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities considered the draft report and adopted the proposal for a decision unanimously.

The following took part in the vote: Rogalla, acting chairman; Gil-Robles, rapporteur; Herman (for Gaibisso), Malangré, Patterson (for McIntosh), Perreau de Pinninck and Simpson (for Prout).

The report was tabled on 25 September 1992.

A
PROPOSAL FOR A DECISION

on the request for the waiver of Mr Pannella's parliamentary immunity

The European Parliament,

- having received a request for the waiver of Mr Pannella's parliamentary immunity, forwarded by the Minister of Justice of the Italian Republic on 30 August 1990 and announced on 8 October 1990 by the President of the European Parliament,
 - having regard to Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, and to Article 4(2) of the Act concerning the election of representatives of the Assembly by direct universal suffrage of 20 September 1976,
 - having regard to the judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986¹,
 - having regard to Article 68 of the Italian Constitution,
 - having regard to Rule 5 of its Rules of Procedure,
 - having regard to the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities (A3-0270/92),
1. Decides not to waive Mr Pannella's parliamentary immunity;
 2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the Italian Republic.

¹ In Case 101/63: Wagner v Fohrmann and Krier, [1964] ECR 397, and Case 149/85: Wybot v Faure, [1986] ECR 2403

B
EXPLANATORY STATEMENT

I. THE FACTS

1. On behalf of the Florence Public Prosecutor, the Italian Ministry of Justice has requested that Mr Giacinto Marco Pannella MEP's parliamentary immunity be waived because:

(a) On 6 December 1975, Mr Pannella was prosecuted by the Florence Court for aiding and abetting criminal activity and constant incitement to abortion, on the basis of the following:

- on 9 January 1975 a fully-equipped surgery was discovered in Florence where Dr Conciani and Dr Sergio Fantechi habitually and exclusively carried out illegal abortions,

- the CISA (Sterilization and Abortion Information Centre), an organization with its headquarters in Milan and linked with the Radical Party, had been sending a large number of women to this surgery every week for abortions,

- on repeated occasions, groups of women were taken to Conciani's surgery in Florence for abortions, with the moral support of Mr Pannella who, for his part, occasionally took charge personally of sending the women there, using various parts of the apparatus of the Radical Party.

(b) At its sitting of 26 July 1989, the Italian Chamber of Deputies rejected a request to authorize a waiver of Mr Pannella's parliamentary immunity, analogous to that put to the European Parliament. Mr Pannella was, at the time, a member of the Italian national parliament. The Florence court therefore ruled that proceedings could not be brought against the accused as this authorization had not been forthcoming.

2. At the request of the Florence Court's prosecutor, an account of the facts and conduct of proceedings is annexed (see Annex I).

This account does not make clear Mr Pannella's direct, personal involvement in the crimes in question actually was.

3. The Italian authorities were asked to forward the decision of the Chamber of Deputies of 26 July 1989 not to waive Mr Pannella's parliamentary immunity as a member of the national parliament. This decision has not been forwarded thus far.

II. IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT : TEXTS AND PRINCIPLES

4. Article 10 of the Protocol on the Privileges and Immunities of the European Communities², annexed to the Treaty establishing a single Council and a single Commission of the European Communities³, which restates the provisions of Article 9 of each of the Protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, reads as follows:

'During the sessions of the European Parliament, its members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its members.'

5. The offence of which Mr Pannella, a Member of the European Parliament of Italian nationality, is accused, is alleged to have been committed on the territory of the Italian Republic. Mr Pannella therefore enjoys the immunities accorded to Members of the Italian Parliament under Article 68 of the Italian Constitution⁴.

6. The procedure⁵ within the European Parliament is governed by Rule 5 of the Rules of Procedure.

² Also note the wording of Article 9 of the same protocol : 'Members of the European Parliament shall not be subject to any form of enquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties'.

³ Referred to in Article 4(2) of the Act of 20 September 1976 concerning the election of representatives of the Assembly by direct universal suffrage.

⁴ Article 68 of the Italian Constitution is annexed.

⁵ Rule 5 reads as follows:

'1. Any request addressed to the President by the appropriate authority of a Member State that the immunity of a Member be waived shall be communicated to Parliament in plenary sitting and referred to the appropriate committee.

2. The committee shall consider such a request without delay. Even if, in so doing, it acquires detailed knowledge of the facts of the case, it may not, under any circumstances, pronounce on the guilt or otherwise of the Member. It shall hear the Member concerned at his request. If he is in custody he may have himself represented by another Member.

3. Should a Member be arrested or prosecuted after having been found in the act of committing an offence, any other Member may request that the proceedings be suspended or that he be released.

4. The report of the committee shall be placed at the head of the agenda of the first sitting following the day on which it was tabled. Discussion shall be confined to the reasons for or against the waiver of immunity. At the end of the debate there shall be an immediate vote.

5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned.'

7. Since the first European elections by direct universal suffrage, the European Parliament has ruled on requests for the waiver of the parliamentary immunity of its own Members. It has dealt with such requests in accordance with general principles designed to ensure that its decisions are not influenced by such considerations as the political affiliations or even the nationality of the Member concerned.

8. At its sitting of 10 March 1987⁶, the European Parliament adopted a resolution based on the report by Mr Donnez on the draft Protocol revising the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 in respect of Members of the European Parliament (Doc. A 2-121/86).

These principles, which are applicable to the case in question, are as follows:

(a) The purpose of parliamentary immunity

Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament and its Members in relation to other authorities. Pursuant to this principle, the date of the acts of which the Member is accused is not important: they may occur before or after the Member's election; all that has to be considered is the protection of the institution of Parliament through that of its Members.

(b) Legal ineffectiveness of renunciation of immunity

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities believes that it should not depart from the principle hitherto observed by the European Parliament that renunciation of parliamentary immunity by the Member concerned has no legal effect.

(c) Temporal limits on immunity

The Court of Justice has twice been called upon to interpret the words 'during the sessions of the European Parliament' contained in Article 10 of the Protocol on the Privileges and Immunities of the European Communities.

The Court's two judgments (Wagner v Fohrmann and Krier of 12 May 1964, Case 101/63, [1964] ECR 397, and Wybot v Faure of 10 July 1986, Case 149/85, [1986] ECR 2403) state that the European Parliament holds an annual session of one year during which (and also during the periods of adjournment of the session) its Members enjoy the immunity provided for in the above protocol.

It follows, moreover, from the very purpose of parliamentary immunity that it operates throughout the whole of a Member's term of office and is effective against the commencement of proceedings, preparatory enquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside. Immunity ceases at the end of the Member's term of office.

(d) Independent nature of European parliamentary immunity compared with national parliamentary immunity

The fact that subparagraph (a) of the first paragraph of Article 10 of the Protocol refers to the immunities accorded to members of national parliaments

⁶ OJ No. C 99, 13.4.1987, p. 44

does not mean that the European Parliament cannot create its own rules - a body of case law, as it were. As for the waiving of parliamentary immunity, there should be no confusion between parliamentary immunity, which is identical for members of national parliaments and of the European Parliament alike, and the waiving of parliamentary immunity, which is a matter for each of the parliaments concerned. These rules, which stem from decisions taken on requests for the waiver of parliamentary immunity, tend to forge a coherent concept of European parliamentary immunity which would in principle be independent of the divergent customs of the national parliaments; otherwise, the differences between members of the same parliament because of their nationality would be accentuated.

9. Article 5 of the Treaty establishing the European Economic Community obliges Member States to facilitate the achievement of the Community's tasks.

III. JUSTIFICATION OF THE PROPOSAL FOR A DECISION

10. The Italian authorities, in this case, have not acted in the spirit of cooperation demanded by Article 5 of the Treaty establishing the European Economic Community, since they have not sent the European Parliament the data which it considered necessary in order to be able to make an informed decision on this request. This fact alone would be sufficient grounds for inadmissibility.

11. Moreover, in this case, the Chairman of Deputies of the Italian Republic itself decided, on 26 July 1989, not to authorize a waiver of Mr Pannella's parliamentary immunity, which means that a request for identical authorization from the European Parliament a year later, without any new facts being alleged or invoked, is a matter for surprise.

As a result, and quite apart from any other considerations, the request for a waiver of immunity must be declared inadmissible.

IV. CONCLUSIONS

16. In the light of the foregoing, and after examining the reasons for and against the waiver of immunity, pursuant to the second subparagraph of Rule 5(4) of the Rules of Procedure, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities recommends that Parliament should not waive Mr Pannella's parliamentary immunity on grounds of inadmissibility.

THE FACTS AND CONDUCT OF THE PROCEEDINGS

On 9 January 1975 officers of the Florence CID, acting on information received the previous day, applied to the Florence Public Prosecutor's Office for a search warrant to ascertain whether abortions were being carried out in significant numbers at a villa located in a hilly area of the city at No. 6, Via Dante da Castiglione and whether the proceeds of the 'industry' were being used to finance feminist movements.

Under the authority granted to them, the officers went to Via Dante da Castiglione the same day at 2.30 p.m. where they found several cars and coaches with number plates from various provinces parked near the villa. A number of young women accompanied by other persons arrived at the villa, the gates and doors of which were opened by a young man with a moustache. At 3.15 p.m. the officers entered the villa and in the rooms on the ground floor they found a number of other men and women waiting; on the first floor there were several rooms with beds where they found other women lying in bed. In the kitchen, which was equipped as an operating theatre, they found two examination couches on which two women were undergoing operations.

In the villa there was one doctor - subsequently identified as Dr Giorgio Conciani - who, after admitting to having performed abortions, was arrested. The officers also arrested Consigli Corrado, Del Panta Umberto and Cavini Umbertina on the grounds that they were acting as nurses and Paolini Alvaro who, although a qualified plumber, was assisting the aforementioned and also wearing a nurse's uniform - an order also given for the arrest of the porter, Borghetti Alvaro.

The examining magistrate was called to the scene. The latter took charge of the inquiries, and ordered the seizure of various documents and medical equipment, including a list of the appointments for the day taken from Dr Conciani. A sum of Lit 3 140 000 and a further sum of Lit 350 000 was found in a safe and confiscated. All the persons found in the clinic were taken to the police station for identification and the women in need of medical care were admitted to hospital.

Following the initial inquiries, the Public Prosecutor ordered the arrest not only of Borghetti but also of Fantechi Sergio, Nevolsen Neith and Forchion Barbara, all of whom were in hiding except for Nevolsen who gave himself up on 15 January 1975.

Two medico-legal expert opinions were sought as a matter of urgency: one to establish whether any of the women found in bed at the clinic had undergone medical intervention; the other to check and describe the medical equipment and the hygienic conditions under which the operations were being carried out.

It was also found that :

1. The villa in Via Dante da Castiglione had been rented by Conciani and Fantechi jointly, Conciani under the assumed name of Monaldi, and efforts were subsequently made to register the tenancy agreement in the name of the Radical Party. At the gate of the villa there was a nameplate with the name of the Party.
2. Previously Conciani, again under the name of Professor Monaldi, had carried out similar activities at No. 28 Via Maggio from the beginning of 1974 until September 1974 and before that he had had a clinic in a flat at No. 26 Via Guicciardini.
3. Feminist groups had cooperated with Conciani and, according to evidence given by Conciani himself, he had, with the complicity of leading members of the Radical Party, first Pannella and then Spadaccia, carried out operations at the request of an organization called the CISA (Centre for Information on Sterilization and Abortion) with its registered office in Milan, Corso di Porta Vigentina, directed by Faccio Adela, assisted by Bonino Emma.

The Public Prosecutor therefore gave judicial notice to Pannella G. Marco for having been implicated in the past and ordered the arrest of Spadaccia, Faccio and Bonino who were charged with involvement in criminal activities. Spadaccia was arrested immediately, Faccio was arrested on 26 January 1975 after a short spell in hiding and Bonino was arrested on 15 June while voting in the local elections.

Following a detailed review of the material collected, the seizure of bank particulars concerning shares and other securities including 100 kg of silver, which Conciani had deposited in a number of banks in Florence and Marina di Pietrasanta, and at the express request of the defendant Spadaccia, the Public Prosecutor requested a formal hearing on the basis of the charges against the defendants who had by now been identified.

The examining magistrate continued the inquiries concerning the CISA and obtained from the Public Prosecutor's Office in Milan documents relating to two cases (No. 407 and No. 935/74) in which the police had kept a watch on the offices of the CISA since 6 December 1973 following an article on abortion published in the periodical 'Il borghese' at that time.

According to the report, Faccio, probably assisted by Parca Gabriella and Kaufmann Erica Lore, ran the CISA, which had its registered office at the premises of the Radical Party of Milan in Corso di Porta Vigentina, where many women from all over Italy came and were sent for abortions either to British clinics or, if the pregnancy had not gone beyond the third month, to local doctors. The local doctors were identified as Nori Fulvio and Montorfono Emilio, partly as a result of the interception of a number of telephone calls authorized by the Public Prosecutor's Office of Milan on line 581203 of the CISA and line 899917 of Nori.

It thus became clear that the activities discovered in Florence were but the continuation of the same criminal activity, with identical means, methods and objectives, linking other persons with the main parties involved. The above proceedings were therefore joined with the proceedings before the Florence court

which had jurisdiction since the activity had culminated in Florence following closure of the clinic and it was in Florence that the most serious crimes of abortion had occurred, in terms of the number of operations and those involved.

Consequently, at the request of the Public Prosecutor and on the order of the Examining Magistrate, two further warrants were issued for the arrest of Nori Fulvio and Montorfono Emilio but both managed to escape arrest and are still in hiding. Subsequently, following the widening of the inquiry to cover both the activities in Florence and those in Milan, the following were charged with the facts as a whole - with an arrest warrant, Faccio and Conciani, still in detention, Fantechi and Forchion in hiding, with a summons, Spadaccia, Borghetti, Nevelson, Paolini, Del Panta, Cavini, Consigli, Lazzeri and Bruni.

Further searches were carried out at the practice and residence of Dr Nori and at the residences of Parca and Montorfono in Milan. Inquiries were also made at the University of Modena and it was found that Montorfono was not a graduate and was still enrolled as a student in the Faculty of Medicine.

The investigation therefore turned its attention to establishing the relationship between Nori and a number of persons who had made out cheques to him but it emerged that these had nothing to do with abortions. The bank statements for Nori's current accounts with banks in Milan were seized and revealed huge and frequent payments of amounts in excess of Lit 1 million.

A statement concerning Nicotra Antonio and Sala Francesca (identified from a declaration by them to Dr Nori and taken from his practice) to the effect that Nori had performed an abortion on Sala on therapeutic grounds was struck from the record.

In the meantime all those arrested had been released on bail; the defendants on bail were issued summonses to appear for questioning.

Subsequently, while the investigation was still pending, the suspicion emerged, following information given to the press by Conciani (see newspaper 'Il Nuovo') and from advertising material (printed by the CISA in Florence) that Conciani has started to carry out abortions again. The Public Prosecutor then asked for telephone calls to be intercepted on lines 690026 and 693037 in the name of Conciani and on line 293391 in the name of the CISA. As a result of the interception of telephone calls and the investigations conducted simultaneously by the Customs Service it emerged that Conciani was again making appointments at his own practice in Compiobbi where he had received a number of women who had informed him in advance by telephone that they wished to terminate their pregnancies. At the same time, Conciani was keeping in touch by telephone and in person with a number of people subsequently identified, who, in turn, operating within the Radical Party whose offices had been installed in an apartment in Via dei Neri owned by Conciani, were interested in abortions and some of these persons let it be clearly understood that they were in the business of performing abortions. It had emerged from simultaneous investigations by the Prosecutor General that Conciani was using an apartment in Via del Campuccio where he was taking persons who approached him for abortions. As a result of these findings, at the request of the Public Prosecutor, the examining magistrate revoked the bail which had earlier been granted to Conciani on condition that he did not resume his criminal activities, a condition implicit in the express obligation to report to the Carabinieri each week.

At the same time, the Public Prosecutor's Office ordered a search in Via del Campuccio and of the residence of Conciari who was found there and arrested while in the company of a certain Montanelli Giulia. A rudimentary surgery in a squalid uninhabited flat belonging to a certain Agostini Filiberto was found in Via della Campuccio. There were still traces of recent medical activities in the flat, which also contained equipment that could be used for gynaecological purposes.

Formal proceedings were also initiated on the basis of these findings and a further warrant issued for the arrest of Conciari for resuming abortions and his criminal association which - in this case - implicated him with Montanelli Giulia, Ricci Andrea, Donvito Vincenzo and Agostini Filiberto who were charged, with a summons, with the same offences, and that of unlawful practice of the medical profession.

Finally, on the basis of the facts set out above, the defendants Pannella and Spadaccia were summoned to appear for questioning. Summonses were also issued charging the defendants Gualandi Anna and Ravagli Marco with the offence of having obtained an abortion; recent investigations showed that the latter had apparently gone to Via del Campuccio for Gualandi to have an abortion.

Conciari Giorgio remained in detention until 13 September 1975 when he was released on bail, partly on the grounds of ill health.

The preliminary investigation thus compiled the following evidence of a general nature:

- gynaecologist's report concerning the women suspected of having had abortions;
- expert medical opinion on the equipment used in the clinic and on the conditions of hygiene;
- medical/legal expert opinion to ascertain whether the defendant Polverari had an abortion in Florence on 9 January 1975 and whether her subsequent admission to hospital in Pesaro was due to complications following the abortion;
- medical/legal expert opinion to ascertain whether the defendant Scarpi Silvana had undergone an abortion on therapeutic grounds;
- accountant's opinion as to the total amounts received by Conciari in the years 1973 and 1974 on the basis of diaries for the two years which had been seized and to establish what amount of the said payments corresponded to receipts presumed from the diary entries.
- expert report concerning translation of the recordings of telephone calls on the following lines: (1) Centro problemi donna (Centre for women's problems), 2. CISA Milan office, 3. practice of Dr. Nori in Milan, 4. Practice of Dr. Conciari, 5. residence of Conciari, 6. CISA office in Florence.

The following items are being held under judicial attachment, in addition to security for costs, material evidence Item No. 4903, a Banca Toscana deposit book in the name of Conciari, containing an amount of Lit. 350 million, a figure which in the accountant's opinion, corresponds to the amount which Conciari presumably received from abortions.

Medical equipment and instruments, pharmaceuticals and various items of evidence are also held under judicial attachment.

The following items have been returned, by order of the Public Prosecutor's office or the examining magistrate:

1. The use of the villa in Via dante da Castiglione, 2. the furniture in the villa not relevant to the investigations, 3. the current account deposits held by Conciani with the Cassa di Risparmio di Lucca, Marina di Pietrasanta branch, the Banca Nazionale del Lavoro, and those covered by the restitution order of 16 July 1975; 4. deposits of silver held by Conciani with the Banca Toscana, 5. deposit of securities.

6. the van, registration No. FI 6i6804, owned by Conciani, was sold and the proceeds of Lit. 849,420 paid as security for costs.

Joint proceedings: at the request of the Public Prosecutor's Office, the following cases have been joined to the principal criminal proceedings:

1. Case No. 247/75 A, v. Conciani Giorgio and Power Frances Jeane. This case concerns proceedings following a report in 1973 relating to facts predating those covered by the principal criminal proceedings. Conciani was suspected of having performed an abortion on Power. It has been impossible to trace Power and Conciani has stated that he intervened following a spontaneous abortion. The Public Prosecutor's Office had concluded by calling for the charges against the two defendants to be dismissed as the abortion was performed on grounds of health. The present examining magistrate has not accepted this request and has formally charged Conciani with the offence although Power still cannot be traced.

2. Case No. 375/75 v. Landi Lorenzo and Butitta Dorotea. Butitta accused Landi, her fiancé, of having forced her by continuous and persistent pressure to use the services of Doctor Conciani to terminate her pregnancy, which she eventually did on 15 November 1975 to escape the intolerable pressure. She subsequently withdrew the accusation. The Public Prosecutor's Office charged Landi with the offence of abortion on a non-consenting woman issuing an arrest warrant and releasing the defendant on bail. Butitta, charged with having given false evidence, again withdrew confirming the original accusation. Conciani had of course been in the dark about the agreement between Landi and Butitta and did not remember anything about the matter.

At the end of the formal preliminary investigation, the Public Prosecutor's Office concluded by requesting that :

1. proceedings should not be brought against Kaufman Erica Lore, Parca Gabriella, Marzovilla Pasquale, Speri Luigi, Barinci Lido, Dell'Amico Raimondo, Mori Franco, Russina Antonia Maria, Bucciarelli Bruna, Deravignone Luigi, Melani Manola, Pieraccini Gianpiero, Deravignone Gino, Capitani Alfiero, Polverari Maria Luisa, Polverari Davide, Saccardo Luigi, Lascialfare Luciano, Liguori Carmela, Liguori Domenico and Ravagli Marco owing to lack of evidence.

2. proceedings should not be brought against Bruni Ines and Lazzeri Laura on the grounds that they had not committed the offence.
3. proceedings should not be brought against Marri Simonetta, Marri Patrizia, Moriani Fabrizio, Cantore Fulvio, Mangiavacchi M. Silvia, Patricelli Rita, Melchionda Ugo Carmine, Toti Gianna, Pardini Enrica, Dolge Giorgio, Roseti Maura, Leonardo Clementina, Cardelli Assunta, Lastrucci Cristina, Laffi Meris, Ragionieri Uliano since there were no grounds for proceeding.
4. proceedings should not be brought against Butitta Dorotea on the grounds that the offence was extinguished as a result of having been withdrawn.
5. all the other defendants be sent for trial to answer for the offences with which they had respectively been charged, confirming the preventive detention of Conciani and the arrest warrants for Fantechi, Forchion, Nori and Montorfano.

Note: After the Public Prosector had reached these conclusions, news was received that the defendant Nevelson Neith had broken the conditions of her bail and had probably left the territory of Italy. The present examining magistrate revoked the bail granted and issued a new arrest warrant which has not yet been implemented owing to the defendant being in hiding.

Article 68 of the Italian Constitution

Proceedings may not be brought against Members of Parliament for opinions expressed or votes cast in the performance of their duties.

No Member of Parliament may, without authorization of the Chamber to which he belongs, be subjected to criminal proceedings; nor may he be arrested or otherwise deprived of his personal liberty, or served with a search warrant in person or in his home unless he is caught in the act of committing an offence for which an order of arrest is compulsory.

A similar authorization is required to arrest or detain a Member of Parliament in the enforcement of a judgment even if it is final.

