Reports of Cases

OPINION OF ADVOCATE GENERAL
COLLINS
delivered on 9 March 2023 [1]

Case C-568/21

Staatssecretaris van Justitie en Veiligheid
joined parties:
E.,
S.,
and their minor children

(Request for a preliminary ruling from the Raad van State (Council of State, Netherlands))

(Reference for a preliminary ruling – Area of freedom, security and justice – Regulation (EU) No 604/2013 – Article 2(l) – Meaning of 'residence document' – Diplomatic identity card issued by a Member State – Criteria and mechanisms for determining the Member State responsible for examining an application for international protection – Vienna Convention on Diplomatic Relations – Privileges and immunities – Right to stay on the territory of the receiving Member State)

I. Introduction

1. The present Opinion considers whether diplomatic identity cards issued by a Member State under the Vienna Convention on Diplomatic Relations, concluded in Vienna on 18 April 1961 ('the Vienna Convention') [2], to third-country nationals who are staff of a diplomatic mission in that State are residence documents for the purpose of Article 2(l) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Dublin III Regulation') [3], with the consequence that that Member State is responsible for examining applications for international protection made by holders of those documents.

1 Original language: English.

2 *United Nations Treaty Series*, Vol. 500, p. 95.

3 OJ 2013 L 180, p. 31.

II. The Dublin III Regulation

2. Recitals 4 and 5 of the Dublin III Regulation are as follows:

'(4) The Tampere conclusions also stated that the [Common European Asylum System] should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.'

3. Article 1 of the Dublin III Regulation, entitled 'Subject matter', states that 'this Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ("the Member State responsible").'

4. For the purposes of the Dublin III Regulation, Article 2(l) defines 'residence document' as '…any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit.'

5. By Article 7(1) of the Dublin III Regulation, 'the criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter'.

6. Article 12(1) and Article 14 of the Dublin III Regulation set out the relevant criteria. Article 12(1) thereof, which article is entitled 'Issue of residence documents or visas', states that 'where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection'. Article 14 of the Dublin III Regulation, entitled 'Visa waived entry', provides:

'1. If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.'

7. Pursuant to Article 29(1) of the Dublin III Regulation:

'The transfer of the applicant … from the requesting Member State to the Member State responsible shall be carried out … at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

…'

III. The facts of the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

8. The applicants for international protection ('the applicants') are a family of third-country nationals. The husband worked at the embassy of his State of origin in Member State X. The husband, wife and two children enjoyed privileges and immunities under the Vienna Convention and received diplomatic identity cards from that State's Ministry of Foreign Affairs. Some years later, the family left Member State X and applied for international protection in the Netherlands. [4]

9. On 31 July 2019, the staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) ('the State Secretary') informed the applicants that he considered that Member State X was responsible for examining their applications under either Article 12(1) or Article 12(3) of the Dublin III Regulation.

10. On 30 August 2019, Member State X rejected the Secretary of State's take charge requests, stating that it had neither issued residence documents nor visas to the applicants since they had been residents of that Member State solely by reference to their diplomatic status. The applicants had entered Member State X and the Netherlands on diplomatic passports issued by their State of origin, so they did not require a visa. Under Article 14(2) of the Dublin III Regulation, the Netherlands was therefore responsible for examining their applications.

11. On 11 September 2019, the Secretary of State asked Member State X to reconsider the take charge requests. The Secretary of State, relying on Member State X's handbook on diplomatic privileges and immunities, considered that the diplomatic identity cards Member State X had issued were residence documents. Under Article 12(1) of the Dublin III Regulation, responsibility for examining the applications lay with Member State X.

12. On 25 September 2019, Member State X accepted the take charge requests.

13. By decisions of 29 January 2020, the Secretary of State decided not to examine the applications for international protection.

14. The applicants lodged an appeal against those decisions. They argued before the rechtbank Den Haag (District Court, The Hague, Netherlands) that Member State X was not responsible for examining their applications because their right of residence in that Member State derived from the Vienna Convention. The diplomatic identity cards that Member State X issued are declaratory and so confirm this.

[4] To protect the identity of the applicants, the order for reference does not indicate their nationality or the Member State of their diplomatic mission, referred to as Member State X. The present Opinion follows that approach.

15. The rechtbank Den Haag (District Court, The Hague) declared that appeal well founded. It annulled the Secretary of State's decisions, holding that the diplomatic identity cards could not be regarded as an authorisation to stay in Member State X, since the applicants already had a right to stay in that Member State under the Vienna Convention. The cards were declaratory, rather than constitutive, of that right. The Secretary of State was therefore required to examine their applications.

16. The Secretary of State lodged an appeal against that judgment with the Raad van State (Council of State, Netherlands).

17. The referring court considers that neither the text nor the context of Article 2(l) of the Dublin III Regulation gives a sufficiently clear definition of the term 'residence document'. That regulation does not expressly state that it must be a document issued under national law. Although it must be an authorisation to remain on its territory issued by the authorities of a Member State, it does not specify what that authorisation must entail. Neither does the Court of Justice's case-law cast any light on the matter. The Vienna Convention obliges the States Parties to permit diplomatic staff and their families to stay on their territories. The receiving State does not have the power to grant or to refuse permission for diplomats to stay on its territory. [5]

18. In the light of these observations, the referring court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 2(l) of the [Dublin III Regulation] be interpreted as meaning that a diplomatic card issued by a Member State under the [Vienna Convention] is a residence document within the meaning of that provision?'

19. The applicants, the Netherlands and Austrian Governments and the European Commission submitted written observations.

IV. Consideration of the question referred

A. Admissibility

20. The Austrian Government submits that, based on the information available to it, the reference may be inadmissible. Although Member State X accepted the take charge requests on 25 September 2019, the applicants' transfer did not take place within six months thereof. Under Article 29(1) of the Dublin III Regulation, the Netherlands is therefore responsible for examining the applications, the Secretary of State's appeal is ineffective, and the question referred no longer requires an answer. [6]

[5] According to the referring court, the right of diplomatic staff to stay in the Netherlands derives directly from the Vienna Convention, not from national law.

[6] See, for example, judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953, paragraph 27 and the case-law cited).

21. I understand from the order for reference that when the Secretary of State lodged the appeal with the Raad van State (Council of State), he applied for a preliminary injunction to suspend the six-month period laid down in Article 29(1) of the Dublin III Regulation. The referring court granted this application on 24 March 2020. It follows that the issue between the parties before the referring court is live and that the reference is therefore admissible. [7]

B. Substance

1. Summary of the parties' observations

22. The referring court arrives at two possible interpretations. A diplomatic card is a residence document within the meaning of Article 2(l) of the Dublin III Regulation and Member State X is therefore responsible for examining the applications for international protection. A diplomatic card is not such a residence document, and the Netherlands is therefore responsible for examining the applications.

23. The Netherlands Government and the Commission support the first interpretation. They submit that the definition of 'residence document' in the Dublin III Regulation is sufficiently broad to include diplomatic identity cards. They rely on this Court's interpretation of Articles 12 to 14 of that regulation to the effect that the application of the criteria laid down in those provisions should, as a general rule, enable the allocation of responsibility for examining an application for international protection lodged by a third-country national to the Member State which that national first entered or stayed in upon entering the territory of the Member States.

24. The Commission is not persuaded that diplomatic identity cards are declaratory rather than constitutive because States Parties to the Vienna Convention have a degree of discretion as to the persons they accept onto their territories as diplomatic staff. They may, for example, declare any of them *non grata* or unacceptable. It would, in any event, be contrary to the aims of the Dublin III Regulation if a Member State that had accepted a third-country national as diplomatic staff did not have an obligation to deal with that person's application for international protection.

25. The Netherlands Government considers that the diplomatic identity cards declare the rights in Article 39 of the Vienna Convention, including the right to stay in Member State X, but that those rights ultimately derive from the decisions of Member State X and the applicants' State of origin to become parties to the Vienna Convention and to enter into diplomatic relations. It is in that context that Member State X authorised the applicants' stay on its territory, without prejudice to its discretion to declare any of them *non grata* or unacceptable. This demonstrates the importance of the role Member State X played in permitting the applicants to stay on its territory.

26. The applicants and the Austrian Government support the second interpretation, albeit via different approaches. The applicants rely on a judgment of the Raad van State (Council of State) to the effect that diplomatic staff and their family members derive their privileged status directly from the Vienna Convention and that it is not dependent on their being in possession of a document. [8] In the same way, the applicants' rights to stay in Member State X derive directly

[7] See, by analogy, judgments of 26 July 2017, *A.S.* (C-490/16, EU:C:2017:585, paragraphs 56 to 60) and of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805, paragraph 46). I express no opinion on the lawfulness of the suspension under the Dublin III Regulation.

[8] Judgment of 27 March 2008 of the Raad van State (Council of State) (NL:RVS:2008:BC8570).

from the Vienna Convention and a diplomatic identity card is merely proof of an existing right of residence. Under the Vienna Convention, the receiving State cannot, subject to very limited exceptions, withdraw a diplomat's right of residence. It follows that the receiving State cannot grant that right. They also point to the fact that diplomats are excluded from the scope of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. [9]

27. The Austrian Government submits that a diplomatic identity card evidences the privileges and immunities that diplomatic staff enjoy under the Vienna Convention. These do not include a right to enter, or stay in, the receiving State. Diplomatic identity cards issued under the Vienna Convention are therefore not residence documents within the meaning of Article 2(l) of the Dublin III Regulation. It points out that many Member States, including Austria, oblige diplomatic staff to apply for an entry visa, which, if issued, is effectively an authorisation to remain in that Member State.

2. Assessment

28. I will first consider the legal context in which Member State X issued the applicants' diplomatic identity cards. I will then address the parties' submissions concerning the case-law of this Court on rights of residence of Member State citizens and examine its relevance in the present context. Finally, I will assess the text and context of the relevant provisions of the Dublin III Regulation, to conclude by holding that they determine the answer to the question referred.

(a) The applicants' diplomatic identity cards

29. The Vienna Convention is a public international law agreement signed and ratified by Member States and non-Member States acting in the exercise of their sovereign powers in the area of diplomatic relations. It does not concern relations with the European Union, which is not a party to that agreement. [10]

30. States Parties to the Vienna Convention agree to confer upon the staff of diplomatic missions certain privileges and immunities with the aim of facilitating the 'maintenance of international peace and security, and the promotion of friendly relations among nations'. The 'purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States'. [11]

31. As the Austrian Government points out, the Vienna Convention does not expressly confer upon diplomatic staff the right to enter and stay on the territory of a receiving State and the States Parties may put procedures in place to deal with such matters. It is nevertheless reasonable to assume that the efficient performance of the functions of diplomatic missions requires that a mission's staff are permitted, not only to enter, but also to stay on, the territory of the receiving State. [12]

[9] OJ 2004 L 16, p. 44. See Article 3(2)(f) of that directive.

[10] Judgment of 22 March 2007, *Commission v Belgium* (C-437/04, EU:C:2007:178, paragraph 33).

[11] The Vienna Convention, 2nd and 4th recitals.

[12] See Denza, E., *Diplomatic Law - Commentary on the Vienna Convention on Diplomatic Relations*, fourth edition, Oxford University Press, 2016, p. 50: 'Although entitlement to enter and remain in the territory of the receiving State is not explicitly spelt out as a privilege in the [Vienna Convention], it is in practice regarded as flowing from Article 7 and given effect in domestic immigration law in so far as this is necessary in some States.' (footnote omitted). Article 7 of the Vienna Convention provides that, subject to specified reservations, the sending State may freely appoint the members of staff of its mission.

32. That right is not absolute. The Vienna Convention confers upon States Parties a material degree of discretion in terms of the identity and number of persons that they accept as staff of diplomatic missions and the duration of their presence following the termination of their functions. [13]

33. Member State X is a signatory to the Vienna Convention, which it ratified in the 1990s. From the circumstances of the present reference it is apparent that Member State X and the applicants' State of origin have established diplomatic relations governed by that convention. Member State X therefore agreed to confer the privileges and immunities of the Vienna Convention to the staff of that diplomatic mission for the purpose of the efficient performance of the functions of that mission, without prejudice to the exercise of its discretion as described in the preceding point of the present Opinion.

34. The order for reference states that the diplomatic identity cards in question include the following information: 'diplomatic identity card, mission, surname, given names, date of birth, personal code, position, date of issue, date of expiry and holder's signature'. The status is also indicated. The national court file does not include a copy of the cards issued to the applicants.

35. The Netherlands Government refers to Member State X's handbook on diplomatic privileges and immunities, [14] according to which a diplomatic identity card grants the privileges and immunities outlined in the Vienna Convention. It is the legal basis for diplomatic staff and their family members to reside in that Member State. Together with a passport, it entitles the bearer to enter and travel within the Schengen States. [15]

36. Member State X has also published a document that includes an example of the diplomatic identity cards that it issues. [16] It bears the heading 'diplomatic identity card' and has a photo of the bearer on the left. The side on which the photo appears includes the information described in point 34 of the present Opinion. The text on the reverse states that it entitles the bearer to reside in Member State X until the date the card expires and, when presented together with a valid travel document, to enter the territory of the Schengen States. The document that includes the example of the card explains that the reverse of the card includes information on the bearer's privileges.

[13] The Vienna Convention provides that the sending State must ensure the *agrément* of the receiving State for the person the former proposes to accredit as head of the mission; the *agrément* may be refused without reason (Article 4). The receiving State has discretion as to the appointment of diplomatic staff that are nationals of that State (Article 8(2)). It permits the receiving State to declare that a person is *non grata* or unacceptable at any time and without having to explain its decision (Article 9). The receiving State may limit the size of the mission, thereby restricting the number of staff (Article 11). The receiving State has discretion to determine the period of time that it considers reasonable for a staff member of a mission to leave its territory following the termination of that person's functions and in respect of the period of time that family members may remain following the death of a member of the mission (Article 39(2) and (3)). Recent events amply demonstrate the exercise of that discretion. On 7 April 2022, the Foreign Ministry of the Republic of Austria announced that it felt compelled to revoke the diplomatic status of three members of the Embassy of the Russian Federation in Vienna and one member of the Consulate General of the Russian Federation in Salzburg. Those individuals had engaged in acts incompatible with their diplomatic status as a result of which they were declared *personae non gratae* under Article 9 of the Vienna Convention and ordered to leave Austrian territory by 12 April 2022.

[14] The Court was not provided with that document; the current version is available on the internet.

[15] Article 19(2) and point 4.3 of Annex VII to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).

[16] This model of the card was notified to the Commission in accordance with Article 34(1)(e) of the Schengen Borders Code and published in the *Official Journal of the European Union* in accordance with Article 34(2) thereof. The previous model, likely the version in use when the applicants arrived in Member State X, was published in the Official Journal three years earlier. For the present purposes, there is no material difference between the two versions.

37. Contrary to what the Austrian Government submits, it appears from the foregoing that the applicants' diplomatic identity cards attest to their right to stay in Member State X for the period specified on the cards, in accordance with the Vienna Convention. [17]

(b) Case-law of the Court on rights of residence and residence permits

38. The applicants rely, by analogy, on this Court's case-law to the effect that the right of nationals of a Member State to enter the territory of another Member State, and to reside there for the purposes intended by the Treaty, is a right conferred directly by the Treaty or, as the case may be, by the provisions adopted for its implementation. The grant of a residence permit to a national of a Member State is to be regarded not as a measure giving rise to rights (a constitutive document), but as a measure serving to prove the individual position of a national of another Member State with regard to the provisions of EU law (a declaratory document). [18] They consider that this case-law can be transposed to the situation of third-country nationals under the Vienna Convention; that the applicants' diplomatic identity cards merely declare rights that they already enjoyed thereunder; and that the authorities of Member State X therefore did not issue them with residence documents for the purposes of the Dublin III Regulation.

39. In that context, it is instructive to consider one of the first judgments in which this Court considered the source of the right of nationals of one Member State to enter and reside in the territory of another, namely its judgment in *Royer*. [19]

40. The Court held that the right of Member State nationals to enter the territory of another Member State and to reside there for the purposes intended by the Treaty is conferred directly by the Treaty or, as the case may be, by the provisions adopted for its implementation. This right is therefore acquired independently of the issue of a residence permit by the competent authority of a Member State. The grant of this permit is to be regarded not as a measure constitutive of rights, but as one that proves the individual position of a national of another Member State with regard to the provisions of EU law. The Court then observed that Directive No 68/360 [20] obliged the Member States to grant the right of residence in their territory to persons who were able to produce the documents listed in that directive and that a residence permit constituted proof of the right of residence. The relevant provisions of that directive were thus intended to determine practical details regulating the exercise of rights conferred directly by the Treaty. It followed that Member States' authorities had to grant the right of residence to any person who fell within the categories set out in the directive and who was able to prove, by producing the specified documents, that he or she came within one of these categories. Since it involved the exercise of a

[17] It appears that under the primary legislation of Member State X, not provided to this Court but available on the internet, treaties and instruments of international law provide the legal basis for the temporary stay and residence of diplomatic staff in that State. Just like the Netherlands, Member State X is commonly described as monist, accepting international treaties that it has ratified as part of national law without the need for implementing national legislation.

[18] See, for example, judgments of 23 March 2006, *Commission v Belgium*, (C-408/03, EU:C:2006:192, paragraphs 62 and 63 and the case-law cited) and of 21 July 2011, *Dias* (C-325/09, EU:C:2011:498, paragraph 54). See also Opinion of Advocate General Bobek in *I* (C-195/16, EU:C:2017:374, points 37 and 38 and the case-law cited).

[19] Judgment of 8 April 1976, *Royer* (48/75, EU:C:1976:57). See also Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

[20] Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition, Series I, 1968(II), p. 485).

right acquired under the Treaty, a failure to complete legal formalities could not be regarded as constituting, in itself, a breach of public policy or public security such as could justify the making of an expulsion order. [21]

41. Two important points arise from this case-law.

42. First, since the contexts are legally and materially different, it is not possible to read across the Court's statements on the rights that Member States' nationals derive from the Treaties within the context of the EU legal order and the operation of the doctrine of direct effect to the privileges and immunities benefiting third-country nationals under the Vienna Convention within the legal order of a given Member State.

43. Second, faced with a situation in which certain Member States had unduly restricted the rights of Member State nationals, the Court held that those rights derive directly from the Treaties and that they existed regardless of the issue of a residence permit. That is not the situation here. It is not argued that there is any discrepancy between the rights the applicants derive, directly or indirectly, from the Vienna Convention and the rights to which the diplomatic identity cards attest or those which the applicants otherwise enjoyed.

44. In the light of the foregoing, I consider that determining whether the applicants' diplomatic identity cards are declaratory or constitutive within the meaning of the judgment in *Royer* does not assist with the resolution of the question before the Court, namely whether those cards are residence documents within the meaning of Article 2(l) of the Dublin III Regulation. What is more, the textual and contextual analysis that follows indicates that it is unnecessary to do so.

(c) Textual and contextual analysis of Article 2(l) and Article 12(1) of the Dublin III Regulation

45. According to the text of Article 2(l) and Article 12(1) of the Dublin III Regulation, a Member State authority that considers that a third-country national or a stateless person is entitled to stay on its territory issues an authorising document to that effect. Member State X did precisely that when it issued diplomatic identity cards to the applicants. [22]

46. The text of those provisions does not indicate that authorisations issued pursuant to that Member State being a party to an international agreement such as the Vienna Convention, or relevant national implementing legislation, are excluded from the definition of 'residence documents'. Similarly, and contrary to the applicants' arguments, it is irrelevant that the document may be described as declaratory or constitutive and/or that it differs in form or substance from the residence permits issued to others, for example to citizens or permanent residents of Member State X. The Dublin III Regulation does not refer to such considerations.

47. That interpretation of the text of those provisions is consistent with the context in which they appear. The Dublin III Regulation aims to establish a clear and workable method to identify the Member State responsible for examining an application for international protection. [23] It is consistent with that aim that all documents Member States issue to authorise persons to stay on

[21] Judgment of 8 April 1976, *Royer* (48/75, EU:C:1976:57, paragraphs 18 to 40).

[22] See, by analogy, judgment of 26 July 2017, *Jafari* (C-646/16, EU:C:2017:586, paragraph 58). In the present case, Member State X did not merely tolerate the presence of the applicants on its territory.

[23] Recitals 4 and 5 of the Dublin III Regulation.

their territory are to be considered residence documents for the purposes of Article 2(l) thereof. That interpretation is also consonant with the Court's understanding of the objectives that the Dublin III Regulation pursues. [24]

48. The Netherlands Government and the Commission also point out that the applicants have the strongest connection with Member State X. They entered the territory of the Member States by virtue of the diplomatic relations between their State of origin and Member State X, where they worked and lived for several years.

49. Holding that Member State X is responsible for examining the applications for international protection is consistent with the Court's case-law on the Dublin III Regulation which seeks to ensure the following three outcomes. First, that responsibility for examining applications lies with the Member State in which a foreign national first entered or stayed upon entering the territory of the Member States. Second, that account is taken of the role Member State X played when the applicants entered that territory. Third, that in an area of freedom of movement each Member State is answerable to all of the other Member States for its actions as regards the entry and residence of third-country nationals. Each Member State must therefore bear the consequences of its actions in accordance with the principles of solidarity and fair cooperation. [25]

50. As both the referring court and the Netherlands Government observe, a different interpretation would mean that third-country nationals in the applicants' position, who enjoy privileges and immunities under the Vienna Convention, have a choice as to the Member State in which to lodge an application for international protection, whereas others, whose residence documents have a different legal basis, do not. This would be contrary to the uniform mechanisms and the criteria to determine the Member State responsible that the Dublin III Regulation seeks to achieve. [26] It is immaterial that only a small number of people may find themselves in the applicants' circumstances.

51. Finally, I am unpersuaded that the exclusion of diplomats from the scope of Directive 2003/109 has any bearing on this conclusion. That directive aims to exclude from its scope persons, such as those who enjoy a legal status under the Vienna Convention, who have no intention of settling on a long-term basis in the territory of the Member States. [27] That does not prevent Member States issuing them with residence documents within the meaning of Article 2(l) of the Dublin III Regulation.

[24] See, for example, judgment of 9 December 2021, *BT (Action against the insured)* (C-708/20, EU:C:2021:986, paragraph 24 and the case-law cited).

[25] Judgments of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 79); and of 26 July 2017, *Jafari* (C-646/16, EU:C:2017:586, paragraphs 86 to 88 and 91).

[26] See, by analogy, judgment of 2 April 2019, *H. and R.* (C-582/17 and C-583/17, EU:C:2019:280, paragraph 77 and the case-law cited).

[27] See Article 3(2)(f) of that directive and Opinion of Advocate General Bot in *Singh* (C-502/10, EU:C:2012:294, points 36 to 39).

V. Conclusion

52. In the light of the foregoing considerations, I propose that the Court answer the question referred by the Raad van State (Council of State, Netherlands) as follows:

Article 2(l) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

must be interpreted as meaning that a diplomatic identity card issued under the Vienna Convention on Diplomatic Relations, concluded in Vienna on 18 April 1961, is a residence document within the meaning of that provision.