During the first phase of the crisis in the former Yugoslavia and at a moment when it was felt that the conflicts in the territory of that state would have tragic consequences, though there was still hope that some of the worst consequences could be avoided, I presented a paper, at a conference organised at the University of Kent, Canterbury, entitled ‘Ethnic nationalism and the Constitutions: the apotheosis of the nation state’. It later transpired that I had been dealing independently with a phenomenon which had also been observed by the American scholar Robert Hayden. We had both concentrated, more or less, on the written phases of the post-communist nation-building process and the revival of the nation state after the collective rule of the Communist Party.

There was a tendency at that time to define the constitutional set-up of post-communist countries as that of states ‘belonging’ primarily to an ethnic group, to the ethnos, and not the demos. To put it more simply, post-communist states and their constitutions were seen as classical nation states created by history and the will of the majority, as these states were considered to be heavily coloured and dominated by an ethnic majority. Nevertheless, in some cases, such ethnic marking was not convincing, due to the presence of so many ethnically diverse citizens. Nonetheless, multinational states were mostly regarded as vestiges of the communist period and in some cases as a result of military occupation by others, predominantly by the Soviets in countries which had been forced to join in with the Soviet Union. People who were ethnically different were generally, and with few exceptions, treated as ‘historical guests’ with ethnical links to other countries, their kin-states, whose protection they could enjoy, and to which in the worst-case scenario they could return. These assumptions could be observed in the operational part of the constitutions or in their preambles, where the
state was defined as the state of a given nation and where members of other nations were, if listed at all, referred to only as secondary citizens who did not belong to the true national corpus. These provisos would of course involve disadvantages for them should the constitution be interpreted in an illiberal and unfavourable manner.

Groups that in the communist period had been recognised as nations were to be regarded as the artificial ‘children of communism’. The situation of those without a kin state, especially the Roma, was difficult, as they were in effect stripped of ‘national rights’.3

Reading the text of this paper fifteen years later certainly provides an interesting experience. It allows the author to reconsider his initial position and to observe the later course of events, producing a need to establish what has changed and to understand the reasons for such developments.

One of the possible conclusions is that in most subsequent constitutions there has been a tendency to avoid direct constitutional statements indicating the primacy of the majority nation and to relegate such references to the historical preamble sections. In these sections it is generally maintained that efforts of self-determination which led to the creation of the state had been the result of historical developments; the preambles often describe the difficult path followed by the dominant nation in establishing a state where it could attain the full enjoyment of its citizens’ right to self-determination.

Let us first deal with those states that have reduced emphasis in their constitutions on their primarily belonging to a single nation4 and have introduced some elements of a liberal understanding of the state resting on the equality of all citizens without regard to their ethnicity. The Constitution of Lithuania of 1992 was amended for this purpose in 1996 and in 1998. The Constitution of Latvia, which essentially is a revival of the 1922 constitution, was amended in 1991 and 1998, and now includes a chapter guaranteeing the use of four languages. A similar case may be provided with the Constitution of Estonia of 1992.

The Constitution of Macedonia of 1991 was amended both in 1992 and in 2001. It still lists the peoples who, in addition to those of the Macedonian nation, are recognised as bearers of state sovereignty, but it has corrected the often criticised absence of the Serbs, who are now mentioned together with Albanians, Turks, Wallachians, Bosniaks and others. It is well known that the latest amendments followed a crisis when the Macedonian Albanians, the second most populous people in the country, militantly insisted on a larger say in running the affairs of the state.