

*The Evolution of Joint-Stock Company Law in the Czech Lands: From Habsburg Codification to Post-Communist Reform**

Abstract

This article examines the legal regulation of joint-stock companies in Czechoslovakia, focusing particularly on the Joint-Stock Companies Act (No. 243/1949 Coll.) and its historical development. It offers a comparative analysis between the socialist-era framework and its predecessors rooted in Austrian commercial law, especially the Allgemeines Deutsches Handelsgesetzbuch (ADHGB) and the Austrian Commercial Code. The study traces the evolution of joint-stock company law from the Austro-Hungarian Empire through the interwar Czechoslovak Republic and the communist era, culminating in the post-1989 reforms and the current Czech legal framework under the Commercial Corporations Act (No. 90/2012 Coll.). The paper highlights the ideological and political shifts that shaped the transformation from state-controlled economic models to a modern market-oriented corporate structure, while emphasizing the continuity and adaptation of legal traditions throughout these changes.

Keywords: joint-stock company, commercial law, Czechoslovakia, legal history

1. Concept, meaning and brief history of joint-stock companies

The primary aim of this article is to provide a comprehensive legal-historical analysis of the regulation of joint-stock companies in the Czech lands, tracing its development from its roots in Austrian and Austro-Hungarian law through the interwar Czechoslovak Republic, the socialist era, and into the modern post-communist period. Special attention is paid to the Joint-Stock Companies Act (No. 243/1949 Coll.), which marked a significant shift towards centralized state control, and to the ways in which political regimes shaped not only the legal form and function of joint-stock companies, but also the underlying legal doctrine and understanding of corporate personality. By comparing successive legal frameworks – from the General German Commercial Code (*Allgemeines Deutsches Handelsgesetzbuch* – ADHGB) and the Austrian Commercial Code (*Allgemeines Handelsgesetzbuch* – AHGB) to the post-1989 Czech Commercial Code and the current Czech Commercial Corporations Act – the article seeks to reveal both continuities and changes in Czech corporate law, and to illustrate how legal regulations reflected broader ideological and economic transformations throughout the 20th and early 21st centuries.

Joint-stock companies in the modern sense¹ appeared in Central Europe starting from about the middle of the 18th century. Karel Eliáš mentions the Austrian joint-stock companies Wiener

Orientalische Compagnie from 1719 and Trieste Assecuranz-Companie from 1766.² Valentin Urfus mentions the first silk company, which was founded in Prague in the form of a joint-stock company as early as 1724.³ The term *akciová společnost* appears in the Czech language around 1830.⁴

The rapid expansion during the 19th century was made possible by new legal regulations, including the Trade and Industrial Code (*Gewerbeordnung*) of 1859 and the Austrian Commercial Code. The Trade and Industrial Code was issued by the Imperial patent decree of December 20, 1859.⁵ This was a very modern and well-crafted piece of legislation (for example, it divided trades into free, tied and licensed trades, and – by an amendment of 1885 – introduced Sundays as a day of rest). Educated industrialists (under the influence of mercantilism and physiocracy) were already aware of the importance of trade for state finances and for increasing the general welfare during the 18th century (precisely in the sense of the basic theses of the Scottish Enlightenment philosopher Adam Smith⁶) and tried to establish some form of state control over trade. These efforts were complicated by the fragmented legal framework of the commercial and bills of exchange law. This fragmentation was due both to the considerable diversity of the individual countries that made up the Austrian state and to historical developments.

The Trade and Industrial Code was of great importance, especially for small businesses. After 1812, commercial relations (especially contract law) were regulated by the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch* – ABGB). Although it was envisaged that commercial law would be regulated in the future by a special legal provision, the Austrian Civil Code contained several provisions of a purely commercial nature. In the case of a loan (*mutuum*), for example, a special rate of interest was provided for between merchants and “manufacturers officially entitled” to engage in “genuine trade.”⁷ Similarly, the application of the ABGB’s representation legislation was extended to owners of a shop, ship, merchant’s shop or other business which entrusted the management to a factor, shipowner, shop steward or other managing agents.⁸

2. Austrian Commercial Code

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¹ On the predecessors of joint-stock companies in the Middle Ages and antiquity, see Eliáš, “Příspěvek k dějinám akciových společností,” 706.

² *Ibid.*, 707.

³ Urfus, *Zdomácnění směnečného práva*, 195ff.

⁴ Jungmann, *Slovník česko-německý*, vol. 1, 9.

⁵ Trade and Industrial Code (RGBl. No. 227/1859).

⁶ Smith, *The Wealth of Nations*.

⁷ § 995 ABGB (JGS No. 946/1811). This provision was repealed by § 6 of the Act of June 14, 1868 (RGBl. No. 62/1868).

⁸ § 1027 ABGB (JGS No. 946/1811).

Efforts to codify Austrian commercial law continued throughout the first half of the 19th century.⁹ According to Petra Skřejpková, they started with the cabinet letter of February 18, 1809.¹⁰ The Court Commission of the Legal Department was charged with drafting the Austrian Commercial Code.¹¹ The law on commercial companies was incorporated in the draft in the first book and preparatory work continued until 1814, but the draft was never published. However, the preparatory work did not continue and, in view of the length of the draft, attention was paid only to the law on bills of exchange.¹² The first phase¹³ was the codification of the law on bills of exchange, which culminated in the publication of the Code of Bills of Exchange for the German and Italian states in 1833.

The actual codification of the Austrian Commercial Code began in 1842. The French Commercial Code (*Code de commerce*) served as a model (in addition to the various previous legal provisions). The Austrian Commercial Code was intended to supplement existing legislation and, therefore, did not contain the law on bills of exchange (which had already been codified) and private maritime law. In relation to the Commercial Code, the Austrian Civil Code was subsidiary (*lex specialis*).

By enacting the Commercial Code, Austria also pursued its political objectives. In the middle of the 19th century, it had the ambition to become a leading force in the intended customs union with the German states, and it was therefore necessary to harmonize commercial regulations with the industrially and commercially advanced countries of the future Germany.¹⁴

The next stage of work on the codification of commercial law began in 1853, when another draft of the Commercial Code was produced within the Ministry of Commerce. This draft was revised two years later by the Ministry of Justice and was also published in print. The Austrian Commercial Code itself was not – as already indicated above – the result of the isolated work of Austrian lawyers and legislators; on the contrary, its creation was coordinated with the other states of the German Confederation. It is worth noting that at this time Austria was at the head of the *Deutscher Bund* and the so-called Greater Germany concept was envisaged, i.e., that Austria would be part of the future all-German state. Therefore, the basic impetus for the drafting of the Code came from the German Congress of 1856. A commission was even set up to draft a German Commercial Code. The members of this commission were representatives of the governments of the individual states (25 in total), lawyers and prominent businessmen. The basis for the commission's deliberations was a

⁹ Randa, *Soukromé obchodní právo rakouské*, 9–12.

¹⁰ Skřejpková, “Příprava všeobecného obchodního zákoníku,” 7–16.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ See Skřejpková, “K dějinám obchodu,” 183.

¹⁴ Vojáček, Schelle, Tauchen, *Vývoj soukromého práva v českých zemích*, 635.

comprehensive draft¹⁵ drawn up by Prussia. Austria itself contributed two proposals – the so-called ministerial proposal and the revised proposal of 1855 and 1857, respectively. The discussions were very long and stormy, and the final draft was not submitted to the assembly of representatives of the “German States” until March 1861. This draft was adopted by all the members of the German Confederation over the next five years under the name *Allgemeines Deutsches Handelsgesetzbuch* (ADHGB). The importance of this codification went beyond commercial law and German-speaking countries and it became an important impetus for the development of private law in Central Europe.¹⁶ In the Austrian part of the Austrian Empire (Cisleithania) it came into force on December 17, 1862.¹⁷ In 1870, the Supreme Commercial Court (*Reichs-Oberhandelsgericht*) was established in Leipzig, first for northern Germany only, later for all German states.¹⁸

The joint-stock company was included among other commercial companies in the second book of the Code, entitled “On Commercial Companies” (§§ 85–249). The legal regulation of the joint-stock company is found in §§ 207–249. Joint-stock companies could only be established with state approval and the minimum content of the articles of association was set. Mergers with other joint-stock companies were also subject to state approval.

The articles of association had to be drawn up in the form of a court or notarial deed. The company had to be registered in the commercial register. The AHGB recognized only registered shares and bearer shares and prohibited the subdivision of shares.

The legislature considered the basic defining feature of a joint-stock company to be the fact that the shareholders are not liable for the company’s obligations and that the company’s capital is distributed in shares.¹⁹ The shareholders’ liability for the company’s obligations was limited to the amount of their shares. Profit was also distributed among the shareholders according to the number of shares held.²⁰ The shareholder was not personally liable for the company’s obligations and shares were freely transferable.²¹ This legislation established one of the basic features of joint-stock companies, which has lasted from the end of the 19th century to the present day.²² Other distinctive features were: separate legal personality, shared ownership of the company by investors, delegation of powers to managers based on a structure headed by a board of directors, and transferability of shares.²³

¹⁵ For more details, see Skřejpková, “A Great Anniversary”, 174.

¹⁶ See also Löhnig, Wagner, *Das ADHGB von 1861*. For the original historical commentary, see Thöl, *Zur Geschichte*

¹⁷ AHGB (RGI. No. 1/1863); Randa, *Das österreichische Handelsrecht*.

¹⁸ Skřejpková, “Obchodní zákoník 1863”, 615.

¹⁹ § 207 AHGB (RGI. No. 1/1863).

²⁰ Vojáček, Schelle, Knoll, *České právní dějiny*, 479.

²¹ Vojáček, Schelle, Tauchen, *Vývoj soukromého práva v českých zemích*, 660.

²² Borkovec, *Akciová společnost a rozptýlené vlastnictví*, 50.

²³ *Ibid.*

Another essential feature was the requirement of state consent for the establishment of the company (consent was issued by the Ministry of the Interior, exceptionally by the monarch) and the form of drawing up the company charter in court or notarial form.

Shares could be either in the name of the owner or in a registered form. Shares could be subscribed for either by the founders themselves (simultaneous subscription) or by the public (successive subscription). The bodies of a joint-stock company were the general meeting, the board of directors and the supervisory board. The board of directors convened the general meeting, which was further divided into constitutive, ordinary and extraordinary meetings. The constituent general meeting was held only once when a joint-stock company was founded. The ordinary general meeting was convened once a year and the accounts were submitted to it. The supervisory board had a control function. The supervisory board was established only on an optional basis.²⁴ Instead of a supervisory board, auditors of accounts could be appointed by the articles of association. However, their work was often insufficient.²⁵

Each share equaled one vote at the general meeting. The AHGB also provided for a silent partnership.²⁶ The so-called silent partner contributed to the joint-stock company based on a contract. Because of this capital contribution, he was entitled to a share in the profit, but did not share in any losses. However, he did not participate in the management of the company. The silent partner was therefore not a shareholder *sui generis*, but rather a “capital participant in a foreign undertaking.”²⁷

Shareholders were not liable for the company’s obligations, but were only obliged to pay a deposit according to the number of shares subscribed for. They could not demand repayment of the deposit for the duration of the company’s existence. The articles of association were the organizational basis of the company. They stated the company name and location of the registered office of the company, the object of the business, the duration, the amount of capital and its division into shares, the type of shares and their nominal value, the principles of the distribution of net profit and the company’s governing bodies.

In the period leading up to the First World War, the regulation of joint-stock companies was significantly impacted by the issuance of the so-called Stock Regulation.²⁸ The purpose of this legislation was to prevent or at least make it more difficult to exploit the imperfections in the legal

²⁴ Vojáček, Schelle, Knoll, *České právní dějiny*, 479.

²⁵ Vojáček, Schelle, Tauchen, *Vývoj soukromého práva v českých zemích*, 662.

²⁶ §§ 250–265 AHGB (RGBl. No. 1/1863).

²⁷ Vojáček, Schelle, Knoll, *České právní dějiny*, 480.

²⁸ Regulation for the Establishment and Transformation of Joint-Stock Companies in the Field of Industry and Trade (RGBl. No. 175/1899).

regulation of joint-stock companies in the AHGB, as well as the establishment of joint-stock companies with fraudulent intentions.²⁹

The application for the incorporation of a joint-stock company had to include the reasons for requesting authorization for the incorporation, the business plan, the persons representing the company until incorporation, the name and registered office, the type of business, the type of shares, information about the general meeting, the board of directors, contributions and benefits for shareholders. The permit issued by the provincial authority was provisional for one year (with the possibility of renewal) and stipulated the conditions for a permanent permit.

For the final authorization, a strategic plan, draft articles of association, the amount of share capital and, in the case of single-shareholder companies, a certificate of payment of deposits were required. In-kind contributions had to be described in the articles of association, and their ownership had to be evidenced by an extract from the public register; for the contribution of a company, the operating results for two years had to be provided. The ministry decided on permanent authorization and approved the statutes. Within a year of approval, the company had to be registered with the commercial court, before which a constituent general meeting had to be held and the share capital had to be fully paid up.

Changes to the articles of association during the company's existence required state approval. The minimum value of a share was 200 crowns or 100 crowns for smaller companies. General meetings were held at least once a year and could be called by the supervisory board or by the shareholders according to the articles of association. The notice of convocation had to state whether amendments to the articles of association were to be discussed, and draft resolutions had to be provided to shareholders on request.

Joint-stock companies were subject to state supervision under the Law of Associations (RGBl. 253/1852) in order to protect the public interest, which was also protected by the civil courts.³⁰

The Stock Regulation fixed the conditions under which the company received state authorization, while §§ 21–23 further regulated the company shares, the registered office and the subject matter of the company's business. The state permit (approval) was entered in the commercial register, and this entry had a constitutive effect.³¹ It should be noted that at the beginning of the 20th century the legal regulation of joint-stock companies was perceived as somewhat cumbersome and unsuitable especially for smaller businesses.

²⁹ Eliáš, "Příspěvek k dějinám akciových společností", 714.

³⁰ Schelle, Tauchen, Horák, Kolumber, *Encyklopedie českých právních dějin*, vol. 15, 54–8.

³¹ § 211 AHGB (RGBl. No. 1/1863).

Nevertheless, even later the joint-stock company was seen as the “highest form of commercial enterprise.”³²

3. Joint-stock companies in the so-called First Republic (1918–1938)

After the new Czechoslovak state was established in October 1918, the laws of the Austro-Hungarian Empire were largely accepted. The distinct legal regimes for the Czech lands and for Slovakia (which, within the dual monarchy, had formed part of the Hungarian half) were retained. This legal dualism also influenced the regulation of joint-stock companies.³³

Like civil law, Czechoslovak commercial law was affected by dualism where both Austrian and Hungarian commercial law applied within the same state. Similarly to the civil law, in the field of commercial law there was very intensive work on its recodification since the Austrian and Hungarian regulations of the 1860s and 1870s did not correspond to the social and economic reality of the 1920s and 1930s.³⁴ The basis of the legal regulation (*sedes materiae*) in Czechoslovak law was also the AHGB (§§ 204–209). To the Austrian Commercial Code must be added the Stock Regulation of September 20, 1899.³⁵ The Stock Regulation was partially amended by the Government Decree on the Establishment of Limited Liability Companies and Joint-Stock Companies (No 465/1920 Coll.), the Decree on the Establishment of Joint-Stock Companies (No 211/1924 Coll.), and the Decree on the Establishment of Joint-Stock Banks (No 211/1924 Coll.). This act was subsequently amended by the Act of April 21, 1932 (No 54/1932 Coll.).³⁶ The Stock Regulation did not apply to banking, credit, insurance, or railway and steamship joint-stock companies.

As far as the Slovak (post-Hungarian) joint-stock company is concerned,³⁷ Rouček points out several deviations from the Czech (post-Austrian) legislation. The first deviation is the name – a joint-stock company was called a participation company. A joint-stock company was always a company and a business, even if it did not carry out actual business. In contrast to Austrian law, the formation of a joint-stock company required not only registration in the public register, but also publication of this registration.³⁸ No state permit was needed to establish a company, but articles of association had to be drawn up in writing – no notarial deed was required. The entire share capital had to be subscribed for and founding members had to issue and sign a prospectus, for which they were jointly and severally liable. Registration in the commercial register was mandatory. Unlike Austrian law, a

³² Benda, *Praktický advokát*, vol. 1, 87.

³³ Vojáček, Schelle, Knoll, *České právní dějiny*, 293.

³⁴ On the unification of Czechoslovak commercial law in more detail, see Vojáček, “Prvek modernizace”, 31–43.

³⁵ Regulation for the Establishment and Transformation of Joint-Stock Companies in the Field of Industry and Trade (RGBI. No. 175/1899).

³⁶ Rouček, *Československé právo obchodní*, vol. 2, 502–3.

³⁷ For more details see Klíčovský, Čorba, *Obchodný zákon platný na Slovensku*, 27.

³⁸ Rouček, *Československé právo obchodní*, vol. 2, 804.

general meeting had to be convened within two months after the subscription period or subscribers could demand their contributions back. In Slovak law, only the general meeting could decide on dissolution – no administrative authority order was needed, nor a notarial record or qualified majority. The resolution was effective only upon registration. For mergers, only the general meeting's decision was required, effective upon registration in the commercial register.³⁹

If we are to evaluate the Slovak (or Hungarian) Commercial Code,⁴⁰ we can agree with the opinion of Ladislav Vojáček that the Slovak commercial law was more modern.⁴¹

In Czech legal scholarship on commercial law, there is a dispute about the legal nature of commercial companies. Karel Hermann-Otavský calls it a “famous controversy”⁴² – the essence of the dispute is whether commercial companies are mere *societas* (as they were in Roman law)⁴³ or whether they are legal persons. Antonín Randa, who was at the origin of this debate, argues that there is both the separate property of the company, which is subject to special rules, and the fact that the company is distinct from the individual shareholders. This is what distinguishes companies (and among them especially the joint-stock company) from the profit companies of Roman law and the *ius commune*.⁴⁴

Arnošt Wenig builds on the earlier works of Randa and understands a commercial company (as opposed to a society – *societas* – of civil law) as “a unity of persons acting outwardly under a common name, i.e., a company.”⁴⁵ Objective law grants this unity of persons legal personality, as well as the capacity to be a party to legal proceedings. For this reason, in commercial law, too, the assets which are to serve a common purpose are strictly separated from the private assets of the partners, much more strictly than in civil law.⁴⁶ Wenig sees a fundamental difference between *societas* (company, partnership) and corporation in the fact that the assets of a company are only the sum of the assets of the individual partners, whereas the assets of a corporation are consistently distinguished from the assets of the partners. Thus, a shareholder has a property interest in each asset of the company and in the individual rights and can freely dispose of them (he is liable to the other shareholders only contractually – he has undertaken to keep his contribution or right in the company). In corporations, members cannot dispose of either their assets or their liabilities. These are, of course, the two extreme positions that Emanuel Tilsch calls the pure company and the pure corporation.⁴⁷

³⁹ *Ibid.*

⁴⁰ Husár, “Zákonný článek”, 38.

⁴¹ Vojáček, “Prvek modernizace”, 31.

⁴² Hermann-Otavský, *Všeobecný obchodní zákoník*, 124.

⁴³ The separation of the property of legal persons from the persons who manage or represent them was already present in Roman law. For details, see Beran, *Pojem osoby v právu*, 14.

⁴⁴ Randa, “O společnostech”, 435.

⁴⁵ Wenig, “K právníkové povaze”, 249–343.

⁴⁶ Hermann-Otavský, *Všeobecný obchodní zákoník*, 124.

⁴⁷ Tilsch, *Občanské právo*, 138–9.

According to Tilsch, commercial law companies and corporations fall between the concept of a pure company and a pure corporation. In the case of a joint-stock company, very little remains of the authorization of the company – mainly that persons (shareholders) are called shareholders in the law and that these shareholders have the right to a proportional share (§ 216 AHGB) in the assets of the company. This share is then reduced to the fact that, after the dissolution of the company, the company's assets are distributed among the shareholders (§ 245(1) AHGB). For the duration of the company's existence, the shareholder cannot dispose of the company's assets in any way.⁴⁸ That is why Tilsch concludes that a joint-stock company can be understood either as an association whose articles of association stipulate that after the dissolution of the association its assets must be divided or, on the contrary, as assets that are equally divided among the shareholders (according to Tilsch, there are also dormant assets) and in fact become the property of the shareholders only after the dissolution of the joint-stock company.⁴⁹

In addition, it should be noted that under current Czech law there are several types of entities without legal personality, such as a company under the Czech Civil Code of 2012 (§§ 2716–2746) and a silent company (§§ 2747–2753 of the same Civil Code). The current view of this historical controversy is that “this dispute has never been theoretically resolved, nor was the case law uniform during the period preceding the adoption of the Civil Code of 2012. Only the legal capacity of legal persons was recognized.⁵⁰ First Republic jurisprudence, followed by the courts after 1989, resolved these doubts in favor of the conclusion that partnerships established under the Austrian Commercial Code were not legal persons.⁵¹ However, even this view was not accepted unequivocally.⁵² Currently, the Czech Civil Code of 2012 provides that business corporations have legal personality from their formation until their dissolution.⁵³

The legal nature of company statutes was equally controversial in the new Czechoslovak state. Randa distinguished between the memorandum of association, which fulfills its role upon registration in the commercial register, and the articles of association, whose function begins only after registration.⁵⁴ So, while registration activates both, the memorandum deals with formation of a company, and the articles concern ongoing governance of a company. Hermann Staub, Oskar Pisko,⁵⁵ Karl Lehmann⁵⁶ and Victor Ehrenberg⁵⁷ made similar arguments. In contrast, according to Wenig, a

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, 140.

⁵⁰ Štenglová, *Zákon o obchodních korporacích*, 2.

⁵¹ *Ibid.*

⁵² Wenig, *Příručka obchodního práva*; Ott, *Úvod*, vol. 1, 155.

⁵³ § 118 OZ. See Eliáš, “Akciová společnost”, 3–14. Lavický, *Občanský zákoník*, vol. 1, 611–5.

⁵⁴ Randa, *Soukromé obchodní právo rakouské. O obchodních společnostech*, 79, footnote 84.

⁵⁵ Staub, Pisko, *Kommentar zum Allgemeinen deutschen Handelsgesetzbuch*, vol. 1, 604.

⁵⁶ Lehmann, *Das Recht der Aktiengesellschaften*, vol. 2, 13.

⁵⁷ Ehrenberg, *Handbuch des gesamten Handelsrecht*, vol. 3, 74.

memorandum of association consists only of the articles of association, together with a subscription for shares.⁵⁸ Jaroslav Pošvář considers company statutes to be a secondary norm formed by a legal act of approval.⁵⁹ Pošvář understands the secondary, derived norm in the context of the normative school of law.⁶⁰

Similarly to the recodification of civil law (efforts to unify and issue a civil code that would unify Czech and Slovak civil law), these efforts were not successful in the field of commercial law until the beginning of the Second World War.

4. Joint-stock companies after the Second World War

The next stage of joint-stock company reforms was adopted after the Second World War. Its purpose was to strengthen creditor protection, particularly by tightening regulations on share capital and capital increases; to ensure transparent company management by more detailed regulations on annual and business reports of joint-stock companies; and to take measures related to the merger of companies. Ivana Štenglová states that the joint-stock company was the only commercial company whose establishment was possible in the Czechoslovak Republic after 1949.⁶¹ All previous relevant legal norms were abolished by the Joint-Stock Companies Act (No. 243/1949 Coll.). There was no substantial change in the evaluation of joint-stock companies in the post-war period even after the new legislation – the Commercial Corporations Act of 2012 (No. 90/2012 Coll.) – was issued. Štenglová likewise regards the regulation of the joint-stock company under the 1949 Act as a “significant change in the law on joint-stock companies.”⁶² This legal framework substantially influenced the further development of the joint-stock company during the period of communist law.

However, it should be noted that the practical significance of this legislation was very low.⁶³ The vast majority of joint-stock companies were nationalized, first after 1945 and then after 1948.⁶⁴ The nationalization was carried out based on the Presidential Decree on the Nationalization of Mines and Certain Industrial Enterprises of October 24, 1945 (No. 100/1945 Coll.). Nationalization was carried out differently in different sectors and depended on the number of employees in the relevant period.⁶⁵ According to § 13 of the cited decree, nationalized enterprises (in legal terminology “national enterprises”) were the property of the state and had the status of separate legal entities.⁶⁶

⁵⁸ Wenig, *Příručka obchodního práva platného v Čechách, na Moravě a ve Slezsku*.

⁵⁹ Pošvář, *Akciová společnost*, 19.

⁶⁰ Weyr, *Základy filosofie právní*, 112ff.

⁶¹ Dědič, Štenglová, Kříž, Čech, *Akciová společnost*, 2.

⁶² Štenglová, *Zákon o obchodních korporacích*, 426.

⁶³ This is also admitted by Štenglová, *Obchodní zákoník*, 2.

⁶⁴ Vlček, “Vývoj obchodního práva”, 105–16.

⁶⁵ Kuklík, *Znárodněné Československo*, 209ff.

⁶⁶ Vlček, “Vývoj obchodního práva”, 106.

According to Ivana Pelikánová, enterprises – in our case joint-stock companies – were nationalized in accordance with communist doctrine. An enterprise was understood as an object of an intangible nature whose assets consisted of real estate, patents, licenses, and trademarks. This object became the basis of the national enterprise, which was already a legal entity.⁶⁷

In this context, it may be added that, after 1948, Czechoslovakia established monopolized foreign trade enterprises (*podnik zahraničního obchodu* – PZO). Among the most important were Tuzex, Strojexport, Škodaexport, Petrimex, Omnipol, and Motokov. These enterprises had the exclusive right to export and import goods. Centrotex was created as a PZO for the textile and clothing industry, while Koh-i-noor specialized in school and office supplies.

These PZOs significantly influenced Czechoslovakia's foreign trade; however, they were not established based on joint-stock company legislation. Their legal foundation was laid by the Presidential Decree on the Regulation, Management, and Control of Foreign Trade (No. 113/1945 Coll.), which created the basis for nationalization and the establishment of state enterprises. Furthermore, the Government Decree on the Organization and Management of Foreign Trade (No. 170/1947 Coll.) aimed to ensure the fulfillment of the tasks set by the two-year economic plan.

The Act on the State Organization of Foreign Trade and International Forwarding (No. 119/1948 Coll.) established the state monopoly on foreign trade.⁶⁸ It also repealed all previous regulations concerning foreign trade.⁶⁹ This legal provision explicitly stipulated that foreign trade could only be carried out by state enterprises established for this purpose.⁷⁰ This led to the creation of the first specialized foreign trade enterprises (PZOs), such as Strojexport,⁷¹ Centrotex,⁷² and Tuzex.⁷³ These enterprises were expressly recognized as legal entities and were governed by commercial law regulations.⁷⁴ Like other commercial companies, they had to be entered in the register maintained by a regional court. In some cases, a PZO took the legal form of a joint-stock company

⁶⁷ Pelikánová, “Právní úprava ekonomických vztahů”, 429–30.

⁶⁸ Section 2(1) of the Act on the State Organization of Foreign Trade and International Forwarding (No. 119/1948 Coll.). See Kanda, “Základní principy”, 1097, and Bystrický „Právo mezinárodního obchodu”, 22.

⁶⁹ Rohlík, “Právní úprava”, 524.

⁷⁰ Adam Kőszeghy speaks – and apparently with full justification – of nationalization, which moreover was carried out by the Minister of Foreign Trade. Kőszeghy “Hranice”, 55.

⁷¹ Decree of the Minister of Foreign Trade on the Establishment of Strojexport, a Foreign Trade Enterprise for the Export of Machinery and Equipment (No. 312/1953).

⁷² Decree of the Minister of Foreign Trade Designating Centrotex, a Joint-Stock Company for Foreign Trade, to Conduct Certain Foreign Trade Transactions (No. 125/1967 Coll.).

⁷³ Decree of the Minister of Foreign Trade on the Establishment of Tuzex, a Foreign Trade Enterprise (No. 163/1970 Coll.).

⁷⁴ Section 9 of Act on the State Organization of Foreign Trade and International Forwarding (No. 119/1948 Coll.).

(for example, the above-mentioned Centrotex, where a PZO was merged with an already existing joint-stock company).⁷⁵ In other cases, the decree referred only to a “legal entity.”⁷⁶

In connection with the adoption of the Economic Code (Act No. 109/1964 Coll.), these PZOs became so-called socialist organizations⁷⁷ with legal personality, directly subordinate to the Ministry of Foreign Trade.

During the period of the so-called economic reforms, the Act on Economic Relations with Foreign Countries (No. 40/1980 Coll.) was adopted, which modernized the regulation of foreign trade. The foreign trade enterprises (PZOs) were obliged to secure foreign currency resources and strategic supplies. After 1989, the state monopoly on foreign trade was abolished. The PZOs were transformed into joint-stock companies or ceased to exist.

Tomáš Dvořák states that a certain renaissance of joint-stock companies occurred after 1968, when the legal form of a joint-stock company was very suitable for trading with foreign partners, while the Czechoslovak state as the only shareholder had all the advantages in case of success, but in case of failure of business transactions it did not bear any responsibility.⁷⁸ Pelikánová states in this context that “the interest in foreign trade retained the legal form of a joint-stock company even after 1948. The purpose of Act No. 243/1949 was therefore to find a compromise between the need to preserve this form and the need to prevent its use for private purposes.”⁷⁹ However, the law completely degraded this form of joint-stock company and transformed it into a hidden form of national enterprise. The system of state authorization became dominant for the establishment of the company and its transformations, leaving no room for private autonomy.⁸⁰ Eliáš also states that under the new legislation the concession system was strengthened, the principle of state supervision was accentuated, and the administrative authorities were left with complete discretion in dissolving joint-stock companies. The purpose of the regulation is obvious - to prevent the free establishment of joint-stock companies.⁸¹ In the context of the aforementioned controversy in interwar legal scholarship about the nature of a joint-stock company as a business corporation, it should be noted that this law does not consider a joint-stock company to be a legal person.⁸² Let us now look at the individual provisions of Act No. 243/1949 in more detail.

⁷⁵ Section 4 of the Decree of the Minister of Foreign Trade Designating Centrotex, a Joint-Stock Company for Foreign Trade, to Conduct Certain Foreign Trade Transactions (No. 125/1967 Coll.).

⁷⁶ This was the case with Pragoinvest. See Section 4(1) of the Decree of the Minister of Foreign Trade on the Establishment of Pragoinvest, a Foreign Trade Enterprise (No. 133/1967 Coll.).

⁷⁷ Sections 30–37 of the Economic Code (No. 109/1964 Coll.).

⁷⁸ Dvořák, *Akciová společnost*, 3.

⁷⁹ Pelikánová, “Právní úprava ekonomických vztahů”, 436.

⁸⁰ *Ibid.*

⁸¹ Eliáš, “Příspěvek k dějinám akciových společností”, 716.

⁸² Eliáš, “Akciová společnost”, 7.

This very brief legislation (the law has only 20 provisions) was in force in Czechoslovakia until 1990. According to this legal norm, a joint-stock company was defined by two features. Namely, the company's capital was divided into individual shares, and the shareholders were not liable for the company's obligations.⁸³ A joint-stock company was a legal person that could legally acquire rights and bind itself. The formation of a joint-stock company required a state permit.⁸⁴ A permit for establishing a joint-stock company was issued by the relevant ministry with the agreement of the state planning authority. The ministry also approved the articles of association and any amendments. In addition to the state permit and approval, registration in the company register (§ 3) was required and the company's name had to indicate it was a joint-stock company (§ 6). The articles of association and amendments were also entered in the register.

During the company's existence, a shareholder could not demand the repayment of his shares but was entitled to a share of the profits as determined by the articles (§ 8). The company's bodies were the board of directors (the leading and representative body), the general meeting (responsible for all company activities, § 12), and the supervisory board (which oversaw all activities, § 16). State supervision was exercised by the competent ministry according to the nature of the business (§ 16). Dissolution could occur by a resolution of the general meeting, bankruptcy, official decision (§ 13(3)), or ministry action in the public interest (§ 4). Company officers were required to act with due care and were jointly liable for any damage caused by negligence (§ 15).

All joint-stock companies had to apply for state approval and for the approval of their articles within a deadline set by government regulation (§ 17). Limited liability companies could convert to joint-stock companies within six months of the Act's enactment, subject to approval of the articles (§ 18). The Act also repealed or limited previous regulations on joint-stock companies, specifically listing the relevant provisions of the Commercial Code, the Stock Regulation, and others as repealed.

5. Joint-stock companies after the fall of the communist regime

After the collapse of the communist regime,⁸⁵ two key laws were successively adopted. The first was the Joint-Stock Companies Act (No. 104/1990 Coll.), which was influenced by Hungarian regulations on joint-stock companies.⁸⁶ Under this law, the concession (permit) system was abandoned and

⁸³ § 1 of the Joint-Stock Companies Act (No. 243/1949 Coll.).

⁸⁴ § 33 a) of the Joint-Stock Companies Act (No. 243/1949 Coll.).

⁸⁵ On the reform of state property into privately owned property with regard to joint-stock companies, see Richter, *Kupónová privatizace*, 97ff.

⁸⁶ Eliáš, "Příspěvek k dějinám akciových společností", 717.

replaced by a normative system.⁸⁷ At the same time, for the first time in the Czech legal system, the law explicitly defined a joint-stock company as a legal entity.⁸⁸

This legislation was replaced by the Czech Commercial Code (No. 513/1991 Coll.), which brought significant changes in the definition of joint-stock companies.⁸⁹ The first of these was a hastily created regulation rather than a successful legal regulation, and brought with it many unsuccessful solutions, including, for example, an incomplete list of shares that a company could issue, or so-called interest shares.⁹⁰ These provided the right to interest payments even if the company did not make sufficient profit in a given year.⁹¹ This type of shares was expressly abolished by the Czech Commercial Code. The most significant change, however, was the fact that the establishment of a joint-stock company under this law no longer required a state permit, which was an important step in the transition to a market economy.

The Czech Commercial Code defines a joint-stock company in § 154 as a company whose share capital is divided into a certain number of shares of a certain nominal value, which is liable for the breach of its obligations with all its assets and whose individual shareholders are not liable for its obligations.

A joint-stock company is therefore both a company and a legal entity.⁹² Eliáš classifies the nature of a joint-stock company according to the Czechoslovak civil and commercial law. He concludes that a joint-stock company is a legal person *sui generis* and defines its two basic conceptual features: it is a commercial company which is a legal person, and its assets are divided into shares.⁹³

Shares may be issued in certificated or book-entry form, as ordinary or preference shares (with preference shares not exceeding half of the share capital), and may be registered or bearer shares. The law defines the structure of a joint-stock company's bodies as a general meeting, board of directors, and supervisory board. Incorporation is regulated in §§ 162ff. A deed of incorporation is used when there is a single founder, while a memorandum of association is used for multiple founders. Signatures must be officially certified, and the minimum share capital is 2,000,000 Czech crowns. The constituent general meeting can only be held once shares equal to the proposed capital are subscribed for and at least 30% of cash deposits are paid up.⁹⁴ The company is established by registration in the

⁸⁷ Lasák, "Akciová společnost", 46–51.

⁸⁸ Eliáš, "Akciová společnost", 7.

⁸⁹ Vojáček, Schelle, Tauchen, *Vývoj soukromého práva v českých zemích*, 662.

⁹⁰ § 10 of the Joint-Stock Companies Act (No. 104/1990 Coll.).

⁹¹ Kříž, "Úvaha na téma", 110–7.

⁹² § 56 of the Czech Commercial Code (No. 513/1991 Coll.). See Eliáš, "Akciová společnost", 4.

⁹³ Eliáš, "Akciová společnost", 13.

⁹⁴ Czech Commercial Code (No. 513/1991 Coll.).

commercial register. After the division of Czechoslovakia, the legal regulation of joint-stock companies was incorporated into the respective legal systems of the Czech and Slovak republics.⁹⁵

The Czech Commercial Code has been repeatedly amended. Effective from January 1, 2000, Amendment No. 370/2000 Coll. brought changes primarily concerning the current regulations on the establishment and operation of joint-stock companies. The main objective was to approximate and harmonize Czech legislation with EU law in the light of binding directives.⁹⁶ The basic regulation is the so-called Second Directive of the Council of the European Communities of December 13, 1976, which is very often referred to in the explanatory memorandum, and its greatest contribution is to improve the protection of minority shareholders of joint-stock companies and creditors. The amendment also introduced a uniform concept of “the duty of care,” based on the Roman law principle of *bonus pater familias* already enshrined in the ABGB,⁹⁷ now applicable to all members of the statutory bodies, thus increasing their responsibility for the management of the company’s assets.

6. Current legislation

With effect from January 1, 2014, a new Commercial Corporations Act (No. 90/2012 Coll.) was adopted, which unified the legal regulation of various types of commercial companies and, among other things, replaced the existing legal regulation of joint-stock companies. The aim was primarily to decodify commercial law and thus eliminate the duplication of civil and commercial law institutes, to simplify unnecessarily formal principles and, last but not least, to harmonize Czech regulations with European law.⁹⁸ However, it must be admitted that, in the area of the legal regulation of joint-stock companies, it is rather organically linked to the previous legal regulation and everything that proved to be functional and useful is taken from it.⁹⁹ It can be summarized that the legal regulation of joint-stock companies has a long and uninterrupted tradition in Czechoslovakia, also thanks to the legislation of 1949.

A joint-stock company may be established by a single founder by drawing up a deed of incorporation, or by several founders by a deed of incorporation when both documents are in the form of a notarial deed. The minimum amount of the share capital is 2,000,000 Czech crowns (approx. 80,000 euros). This must be paid up from at least 30% of the value of the shares subscribed for before the application for registration in the Commercial Register is filed.¹⁰⁰ There is also the possibility of establishing a company by a public offer of shares if the share capital amounts to 20,000,000 Czech

⁹⁵ Eliáš, “Příspěvek k dějinám akciových společností”, 717.

⁹⁶ Štenglová, *Obchodní zákoník*, 7–8.

⁹⁷ § 228 ABGB (JGS No. 946/1811).

⁹⁸ Explanatory Memorandum to the Act on Commercial Corporations (No. 90/2012 Coll.).

⁹⁹ Hejda, *Akciová společnost*, 9.

¹⁰⁰ To compare some aspects of Czech and Austrian law, see Bučková, Kalss, “Převod akcií”, 107–11.

crowns.¹⁰¹ The formation of a joint-stock company takes place by registration in the commercial register. The application is filed by the members of the board of directors and must be filed within six months of the company's incorporation. A new feature is the possibility to choose between the traditional dualistic system (board of directors and supervisory board) and the new monistic system (board of directors only).

7. Summary

The legal regulation of joint-stock companies in the Czech lands has evolved significantly from its origins in Austrian law, reflecting both industrial development and changing political regimes. The Imperial Law on Associations and the Austrian Commercial Code (AHGB) laid the foundation by establishing key features such as share-based capital, limited liability of shareholders, and the requirement of state approval for incorporation. Following the creation of Czechoslovakia, these legal traditions continued to influence company law, while important scholarly debates – led by figures like Randa and Tilsch – helped shape the understanding of joint-stock companies as distinct legal entities separate from their shareholders.

The enactment of the Joint-Stock Companies Act in 1949 marked a turning point by introducing stringent state control over joint-stock companies, requiring ministerial permits, state approval of articles of association, and comprehensive supervision throughout the company's existence. Shareholders were limited to participation in the company's profits and could not demand payment of their shares, while company dissolution could be ordered by the relevant ministry in the public interest. However, the practical impact of this legislation was curtailed by widespread nationalization, which transformed most joint-stock companies into state enterprises.

It should be noted, however, that even this state formalism did not help joint-stock companies survive in the changed social conditions after the communist regime took power in February 1948, and this legal form of commercial company completely fell out of use.¹⁰²

After the fall of communism in 1989, the legal framework underwent substantial reform. The permit system was abolished and new legislation explicitly recognized joint-stock companies as legal persons. The Czech Commercial Code of 1991 introduced modernized rules, including different share types and clearer governance structures, aligning Czech law with European Union standards. The current Act on Commercial Corporations, effective from 2014, further unified and simplified the regulation of commercial companies, allowing both dualistic and monistic governance models and raising minimum capital requirements.

¹⁰¹ Act on Commercial Corporations (No. 90/2012 Coll.).

¹⁰² Knapp, *Obečné právní formy*.

In conclusion, the regulation of joint-stock companies in Czechoslovakia and the Czech Republic has continuously adapted to political and economic transformations, progressing from a model of strict state control to a modern, market-oriented legal framework, while maintaining a consistent and enduring tradition of joint-stock company law.

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