

# CASINOS OPERATIONAL MODELS IN FRANCE AND THE CASE OF MONACO

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**Abstract:** France has established an original legal and economic regime whereby the authorisation that it grants casinos takes the form of a public service delegation (similar to a concession) with powers shared between the State and the gambling establishment's host town. By this mechanism, the French state prevents the emergence of a virtual casino market and drastically controls the activity of traditional casinos (i). For historical reasons, the French legal model has largely inspired Monaco's legislation that has, nonetheless, adapted its rules of law to its geographic, demographic and economic constraints (ii).

**Keywords:** Casino; online casino; public service delegation; operation; state; town; prohibition; authorisation; France; Monaco; public policy.

## **Introduction:**

In France, at the end of the 16th century, gambling was authorised for the nobles, but continued to be prohibited for the people. At the time of the French Revolution, gambling was fully tolerated whilst legislation discreetly forbid it.

For casinos, the veritable innovation was due to a decree of 1806 which allowed the Chief Commissioner to issue derogatory authorisations for seaside resorts and "*for places where there are mineral waters, only during the season of the waters and for the City of Paris*".



The law of 15 June 1907 on casinos<sup>1</sup> created an exception to the prohibition on gambling houses as provided for by the French Criminal Code. In 1907, casinos were specifically authorised in spa towns. Then, in 1923 gambling clubs were authorised in major cities. However, while the French state approved the creation of casinos in seaside resorts, spas and health resorts, since a law of 5 January 1988 towns with a population of more than 500 000 inhabitants have the right to host a casino. At the end of the year 2016, France had 200 casinos (193 installed in mainland France and 7 present in French Overseas Départements and Territories) mainly located along the coast.

Thus, despite more flexible legislation for casino owners, an intention to precisely limit the scope of action of gambling activities can be noted. The spirit of legislation in the field of authorised gambling houses is still to restrict the opportunity for gambling.

Consequently, there is tight control and supervision of the operation of casinos in France (I) and in the Principality of Monaco, which is widely inspired by the French model (II).

## **I. The operation of casinos in France: an original model in Europe**

Under French law, casinos present unique characteristics in the sector of gambling and games of chance, which gives them the status of public service delegation holder (*délégataire de service public*) due to their contribution to the development of local tourism (A). This condition results from a sharing of prerogatives between the State and the towns where casinos are installed (B) With the State's determination to protect domestic public policy, the French economic and legal model for the operation of land-based casinos prohibits the operation of online casinos (C). Thus, the State exercises control over authorised casinos through several authorities (D).

### **A. A model based on a public service delegation (*délégation de service public*)**

An authorisation granted to casinos in the form of a public service delegation is a special feature of French law.

The recognition of a public service delegation may only be contemplated insofar as the agreement concluded between the casino and the town is an administrative contract, making *de facto* the administrative judge competent in the context of litigation (i), The type of contract and the court with jurisdiction

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1 This law is now codified in the Code of Interior Security, in articles L. 321-1 to L. 321-7.



led to a change in the designation of the mission entrusted to casinos (ii).

Firstly, the classification as an administrative contract could be contemplated taking into account the content of the agreement. An agreement containing a clause incompatible with ordinary law causes the contract to be classified as an administrative contract<sup>2</sup>. This clause often contains an inequality in favour of the public entity. For instance, the agreement may provide for a unilateral modification or termination of the contract for the public entity<sup>3</sup>. Secondly, the classification of the agreement concluded between a casino and a town as an administrative contract, may also depend on its purpose<sup>4</sup>. Indeed, if the contract's purpose is to grant the private-law contracting party a public service mission, then the agreement must be governed by administrative law. In practice, this is the case when the contract provides for a right of control of the exploitation of gambling by the town or when the operator must bear the burden of obligations in respect to the cultural offer<sup>5</sup>. At the same time, the judiciary system also confirmed this situation in 1986. The Cour de Cassation (French Supreme Court) declared that it lacked jurisdiction for litigation between a casino and the town where it was located<sup>6</sup>. Generally, it is admitted that the operation of a casino must be defined in an administrative contract and that any litigation must be referred before the administrative court.

Over time, legislation has greatly increased the constraints on casinos and requires them to be much more involved in the tourist and cultural offer. The single article of law 49-1567 of 7 December 1949 requires casinos to allocate a large portion of their income to improving tourist facilities<sup>7</sup>. The objective pursued by the administrative contract, on which the relationship between the casino and the host town is based<sup>8</sup>, is much wider than the exploitation of games of chance. The gambling establishment contributes to and supports the local tourist economy and encourages access to culture. In addition to the gaming rooms, the casino may contain, within its walls, a restaurant, a discothèque or even a show venue. According to article L. 422-12 of the Local Authorities Code (*Code des collectivités territoriales*), the town has the right to withhold levies on

2 Didier Truchet, *Droit administratif*, PUF, 2<sup>nd</sup> ed., 2009, p. 261 and 262 – CE, 31 July. 1912, GAJA, n° 26, GD, p. 532.

3 *Ibid.*

4 Didier Truchet, *op. cit.*, p. 263.

5 T. Conf, 13 June 1955, Rec. 620 – T. Conf, 28 May 1962, Rec. 818.

6 Cass. civ. 1<sup>st</sup>, 18 Feb. 1986, n° 84-14116, 84-16822, 84-16823.

7 Law 49-1567 of 7 December 1949, JORF, 8 Dec. 1949, p. 11847.

8 CE, 1<sup>st</sup> May 1931, *Giacomi c. town of Chamonix*, Rec. 463.



the income from gaming, in order to promote tourism. Thus, the exploitation of gambling allows socially useful activities to be financed. For these reasons, the contract binding the casino and the town is concluded in the general interest and for the benefit of the community. In a decree of 25 March 1966, the Council of State admitted that the operating concessions issued by towns to casinos were public service concessions<sup>9</sup>. In 1995, the Council of State reaffirmed this solution and stated that: casinos “*contribute to the development of tourism in the towns concerned. When this latter objective is concretised in the job specifications which determine the obligations incumbent on a casino operator, in particular when the latter is bound to contribute to the town’s tourist and cultural events, the job specifications, taken as a whole, can be said to be a public service concession and, as a result, an administrative contract*”<sup>10</sup>. It should be specified that it is not the fun activity that is considered to be a public service, but the casino’s contribution to the town’s economic, tourist or cultural development<sup>11</sup>. By application of the Sapin law of 1993, the classification as a public service concession was modified to that of a public service delegation, appearing to be more appropriate for the activity of a gambling house.

Since 2003, the Council of State has classified the activity of a casino as a public service delegation.<sup>12</sup> This functioning corresponds, in a manner of speaking, to the indirect financing of the host town, by the State by issuing administrative operating authorisations.

This system leads to a sharing of prerogatives between the town and the State.

### **B. A sharing of competence between the host town and the State**

In the context of a delegation of public service, the prerogatives are necessarily shared between the State and the town hosting the gaming establishment. The administrative authorisation granted by the State is a policy measure, insofar as the organisation of games of chance falls within the criminal domain and therefore that of the State<sup>13</sup>. For its part, the town concludes the contract with the delegation holder after opinion of the town council and

9 CE, 25 March 1966, Town of Royan, Rec. CE 1966, p. 237.

10 CE, avis, 4 April 1995, in Les délégations de casinos by Benoît Jorion, lawyer at the CA de Paris, [communes-touristiques.net/pdf/casinos\\_note\\_jorion.pdf](http://communes-touristiques.net/pdf/casinos_note_jorion.pdf), p. 4.

11 Marie-Christine Rouault, Police des spectacles et des jeux, fasc. 211, JCL Administratif, Sept. 2005, p.13, n° 227.

12 CE, 3 Oct. 2003, Commune de Ramatuelle, n° 248523.

13 CE, 29 July 1994, Rec. p. 402.

determines the casino's location and its job specifications, in application of the principle of the administration freedom of local authorities<sup>14</sup>. The State and town not only share powers but also the tax revenues<sup>15</sup>.

The method for attributing this delegation, the material conditions of the operation of casinos, the contribution of casinos to community life and the geographic limits within which the gaming establishment is confined prevent the exemption regime applicable to land-based casinos being applied to casinos in the virtual world:

The town's monopoly as regards casinos cannot adapt, without measures being taken, to the virtual world. The sharing of prerogatives and profits between the town and the State makes this hypothetical adaption totally impossible.

### C. The prohibition of online casinos

Two arguments plead for the prohibition of online casinos in France. The first argument is that online casinos are not compatible with the traditional offer and that the opening of this market would distort competition with land-based casinos with a public service obligation (tourist and cultural development in the host town). Moreover, the geographical restrictions imposed by French law on land-based casinos would not be pertinent with the presence of virtual casinos which do not have any territorial limit and which, consequently, would not have a host town. This also implies a problem of tax revenue for towns that could benefit from a proportional tax on the turnover realised by an online casinos.

The second argument is based on the technique of the dematerialised offer and its reliability for the public. Online casinos could violate the public policy of protection for which the State is the guarantor.

In general, the French offer is explicitly stated and has a time limit. A betting offer or a game of chance may not be tacit or have no time limit<sup>16</sup>. In France, the companies holders of the State monopoly only propose explicitly stated offers with a time limit. This does not mean that it is not possible to imagine a bet without a time limit whose objective would be the completion of an event on an unknown date. In this case, if the event does not occur, the parties hypothetically remain bound indefinitely by their obligations. To prevent this, French gaming companies

14 Art. 72 para. 3 of the Constitution: *"In the conditions provided for by the law, these local authorities are freely administered by elected councillors and have regulatory powers for the exercise of their functions."*

15 Matthieu Escande, *Le Droit des Jeux d'Argent et de Hasard*, l'Harmattan, collec. Logique Juridique, 2013, p. 223 et s.

16 Except for stock market gambles.



always offer agreements with a time limit. This affirmation is valid whatever the gambling sector. For horse races, lotteries or games of chance, the condition of a time limit is always respected. It is perfectly possible to identically transpose the temporal criteria to a virtual offer, except in the case of games of chance played in land-built casinos.

It is admitted by all that the offer lapses when the time limit has expired or when the offeror has made a modification in the conditions of the contract<sup>17</sup>. The expiry of the time limit determined in the proposal leads to the lapsing of the offer. As regards lotteries, sporting bets and other games of chance, the imposed time limit corresponds to the time preceding the removal of the uncertainty of the event. To illustrate this, we can firstly refer to the game of roulette or la boule. In the traditional method, the offer is clearly stated by the croupier who says intelligibly: “place your bets” then “the bets are placed” and finally “end of bets”<sup>18</sup>. This last expression announces the expiry of the time limit in this game, in compliance with the rules. This verbal information specifies to the players that the time has expired for placing their chips on the table. After this time limit, the bets are refused, otherwise it is considered that the randomness in the game is impaired. The time limit for the offer is compulsory in order to prevent the player from foreseeing the number or zone on which the ball will stop. Implicitly, it is also a guarantee of the authenticity of the game. The great difficulty is that for virtual casinos, this hypothesis does not exist. The player himself decides when the ball is launched on the roulette once the chips have been placed on the digital table. This technique gives the player time control in the game. A second difficulty stems from the player’s right of contradiction in the case of incorrect handling by the croupier in a land-based casino. In a real casino room, it is possible to ask the head of the game for a video control to conduct a verification. In a traditional casino game, such as roulette, la boule or craps, the randomness depends simply on the laws of physics, whereas in an online game, the player must trust a software application, with all the suspicions that this system tends to raise. Concretely, a French web user who plays in a virtual casino based on the Island of Grenado has no way of measuring the reliability of the proposed game. It is impossible for a player to be sure of the reliability of the software applications simulating games of chance. This raises many questions: What logarithms are used? Are there cycles or repetitions of combinations in the game or the results? Are the results really random? What kind of check is carried out and by whom? In what conditions of independence, impartiality and neutrality is this check performed?

17 Céline Castets-Renard, *Droit de l’internet*, Montchrestien, 2010, n° 401.

18 For roulette: Art. 51 of the decree of 14 May 2007 relating to regulations on gaming in casinos  
– For the game of la boule: art. 35 of the same decree.



Is there a history of the games played or the moves made? All these questions raise the problem of the reliability of the game and, consequently, the risks run by the web users<sup>19</sup>.

Consequently, it is forbidden to operate virtual casinos on French soil with heavy penalties laid down in the Code of Interior Security.

On the other hand, traditional casinos are subject to increased control by the public authority.

#### **D. The control of the public authorities over the gaming establishments**

In France gambling is subject to specific control by the public authorities. The operators in the sector fall under different control bodies.

For casinos, it is mainly the Ministries of the Interior and Finance. Decree 59-1489 of 22 December 1959 concerning regulations on gambling in casinos in seaside resorts, spas and health resorts specifies, in fact, that the supervision “*is carried out jointly by the representatives of the minister of the interior and the minister in charge of the budget who have exactly the same prerogatives and the same powers of control over all aspects of the operation of casinos*”.

The Superior Gaming Commission (*Commission supérieure des jeux*), established by the minister of the interior by a decree of 6 November 1934, is also responsible for giving an opinion on all requests for authorisation and authorisation renewal for gambling in clubs and casinos. This commission, chaired by a state councillor, is composed of five elected members (a senator, an MP, two mayors of classified towns and the chairman of the National Association of Mayors of Classified Resorts and Tourist Towns) and fifteen high-ranking officials.

With the intervention of these three main State organs, the French State ensures ongoing supervision of gaming establishments.

## **II. The operation of casinos in Monaco**

The existence of the Monte-Carlo casino is very closely linked to the history of the Principality of Monaco and the Kingdom of France. In 1512, King Louis XII recognised Monaco and signed a perpetual treaty with the Principality. By the treaty between France and Monaco of 1891, ratified by Charles III, Monaco transferred the towns of Menton and Roquebrune-Cap-Martin to the French in

19 Cybergambling et cybercriminalité, Comment concilier les approches juridiques et techniques ?, Dominique-Sylvie Dine, Retranscription of the paper presented on 19 January 2005 at Sorbonne, at the time of the Conference « Police et Internet », co-organised by the DESS of the Université Paris-I Droit de l’Internet – Administration-Entreprises.



exchange for the guarantee of its independence by France.

Prince Charles III of Monaco anticipated the economic loss of this transfer to France of vast areas of agricultural land that constituted the wealth of the Principality and authorised, in 1856, the opening of a casino in his principality to generate financial resources.

Sacha Guitry wrote in *“Mémoires d'un tricheur”* (Memoirs of a cheater): *“in Monte-Carlo, a casino was built first, then a town rose up around it”*. This explains the strategic role of casinos for Monaco.

Now the Principality of Monaco has four casinos, all held by the Société Anonyme des Bains de Mer et du Cercle des Étrangers à Monaco (S.B.M.): the Monte-Carlo Casino, the Café de Paris Casino, Sun Casino and the Monte-Carlo Bay Casino.

As a result of the special relationship between France and the Principality of Monaco, the latter's official language is French, applicable ordinary law is the French Civil Code (A) and the rules on the operation of casinos are largely inspired by the French system (B).

### A. Ordinary law applicable to gaming contracts

The civil rules applicable to the gaming contract are governed by the Monegasque Civil Code, which is a recodified version of the Civil Code dating back to the Napoleonic era

Articles 1964 and 1965, 1966 and 1967 of the French Civil Code apply in Monaco, but are codified in as follows in the Monegasque Civil Code. Article 1804: *“The law provides that no legal proceedings shall be brought for a gambling debt or the payment of a wager; article 1805: “Gambling linked to feat of arms, running and horse races, chariot races, the paume ball-and-court game and other games of the same type based on dexterity and exercise of the body, are exempted from the preceding provision.” However, the court may dismiss the request when it considers the sum to excessive”; and article 1806: “In no case may the loser repeat what he voluntarily paid, unless there was, on the part of the winner, fraud, deceit or false pretences”.*

Article 1804 of the Monegasque Civil Code (C.civ.art. 1965) means in practice that a casino may not grant a person credit to play, failing which it will not be able to claim the payment of the debt or the losses of the players.

Confirming an established precedent of 31 January 1984<sup>20</sup>, the first Civil Chamber of the Cour de Cassation (Supreme Court) reaffirmed that *“the client of*

20 Cass. civ. 1st, 31 January 1984, in Alain Bénabent, *Droit civil: Les contrats spéciaux civils et commerciaux*, Montchrestien, 2008, n° 1363, p. 688.





*a casino may invoke article 1965 of the Civil Code under the terms of which the law does not authorise any action for a gambling debt, if it is established that the debt is linked to loans granted by the casino or [...] by a company instructed by the latter to cash in the cheques managed by it and to recover gambling debts”*

<sup>21</sup> In this case, the casino, the Société des bains de mer et du cercle des étrangers à Monaco, had deliberately incited a client to gamble by granting him a loan. On 20 April 1987, the player had issued a cheque for the sum of 938 000 US\$, which was not paid when presented on 14 March 1988. The Cour de Cassation (Supreme Court) rightly considered that it was a loan. The transfer of funds was deferred, due to the use of a cheque to pay a gambling debt. Consequently, a mandated debt collection company must be dismissed insofar as the claim is, in actual fact, a loan granted to a person wishing to engage in the pleasure of gambling.

On 30 June 1998<sup>22</sup>, the Cour de Cassation (Supreme Court) went even further invoking the wrongful behaviour of the casino. The casino owner considered that the *“the handing-over of casino chips for a cheque may not constitute an advance and characterise a credit transaction”*. The Court confirmed its arguments, but underlined that *“the disputed cheque was made out by [the gambler] on a form pre-printed by the Casino and, in addition, the cheque, issued on 24 March 1991, was only presented for payment on 30 July 1991, that is to say four months later”*. Thus, according to the Cour de Cassation, the judges on the merits correctly classified this loan transaction intended to feed gambling, in compliance with their sovereign power of appreciation. The gambling establishment found itself, once more, unable to claim the sum given to a player in the form of chips in exchange for an uncovered cheque, in application of article 1965 of the Civil Code. Thus, the legal rule that extends the application of article 1965 of the Civil Code to loans intended for gambling is, undeniably, a measure of protective public policy intended to protect, in particular, the “gambler-borrower”.

The repressive rules are mainly contained in article 350 of the Monegasque Criminal Code, which lays down that: *“Those who, without the prior authorisation of the Government, have established or held houses for games of chance, or organised lotteries of any type or sales made by drawing lots, and, generally, all transactions offered to the general public, regardless of how it is named, to incite hope of winnings which would be due to good luck, shall be punished by a prison sentence of one to six months and the fine provided for under point 2 of article 26, or just one of these penalties”*.

In other words, the Principality of Monaco condemns illegal gambling

<sup>21</sup> Cass. civ. 1st, 3 June 1998, n° 96-13047.

<sup>22</sup> Cass. Civ. 1st, 30 June 1998, n° 96-17789 ; V. Patrice Le Maigat, LPA, 22 June 1999 n° 123, P. 28 and Rémy Libchaber, D., 1999, p. 112.



houses and exercises increased control over authorised gambling houses, the power being held directly by the Prince of Monaco.

### **B. Special overriding law for gambling houses in Monaco**

The first article of law 1.103 of 12/06/1987 relating to games of chance does not itself evoke an exception to a general principle of prohibition but indicates that the operation of a casino is subject to an authorisation. The lack of an authorisation leads to the criminal sanction provided for in article 350 of the Monegasque Criminal Code: *"The authorisation, to which reference is made in article 350 of the Criminal Code, to establish or hold a gambling house may only be granted under the conditions determined by this law and for the games indicated on a list drawn up by a Sovereign Ordinance that determines the regulations governing the operation of each game This law is, however, not applicable to lotteries, pooled betting (pari mutuel) and forecasts games"*.

Consequently, the spirit of French legislation is very different, since it lays down the principle of prohibition then an exception to this general prohibition.

In Monaco, the authorisation to establish a gambling house is granted by a Sovereign Ordinance. In other words the authorisation is directly granted by the Prince. This authorisation very precisely defines: (1) the names and capacities of the authorisation holder(s); (2) the premises where the authorised games are operated; and (3) the number of authorised gambling tables and automatic appliances. This authorisation comes with very strict job specifications.

Law 1.103 of 12/06/1987 relating to games of chance is comprehensive and provides for special rules on the conditions of employment in gambling houses.

As regards access to gambling houses, the legislation of Monaco shows originality. Whilst, as in France, access is prohibited for (1) those under the age of eighteen, (2) soldiers of all ranks in uniform, (3) ministers of religion and those who belong to a religious congregation, (4) individuals who are under the influence of alcohol or drugs, and (5) persons who have requested self-exclusion, the law of Monaco surprisingly prohibits access to all citizens of Monaco and government employees and agents of the State.

The sole objective of gambling houses located in Monaco is to enrich the Principality- This measure was taken due to the limited area of the Principality and its small population. Letting the citizens of Monaco gamble would therefore have the negative effect of dispossessing the Principality and the citizens of Monaco themselves. Consequently, only players from a third-party country are authorised to gamble.



## **Conclusion**

The French State and the Principality of Monaco pursue the same objective by adapting the rules of law relating to the operation of casinos to their geographic, demographic and economic constraints. However, the two States control the gambling offer and supervise the operation of gambling houses with the primary purpose of redistribution to the community.

