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Express Termination Clauses via Certified Email or Registered Mail: Contractual Form Limits

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ABSTRACT
In Order No. 26272 of 5 October 2026, the Italian Supreme Court of Cassation addresses the validity of notices invoking an express termination clause where the contract prescribes a specific delivery channel. Setting aside the appellate ruling in a sale and lease back dispute, the Court holds that an agreement requiring registered mail with return receipt triggers by analogy the presumption of essentiality under Article 1352 of the Civil Code, encompassing the chosen means of transmission. Consequently, general statutory equivalence between certified email (PEC) and registered mail under Article 48 of the Digital Administration Code does not apply unless clear proof of contrary intent emerges under contractual interpretation rules. This note examines the 2026 divergence with Labour Section rulings, investigates a doctrinal friction regarding a 2022 precedent, and assesses how shifting termination from the PEC notice to judicial filing affects interim lease instalments.

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Express Termination Clauses via Certified Email or Registered Mail: Contractual Form Limits

Contractual form under Article 1352 of the Italian Civil Code, limits of Article 48 of the Digital Administration Code, and timing of termination effects in Italian Supreme Court of Cassation, Civil Division, Order No. 26272 of 5 October 2026.

RL Rosa Larosa Civil Law & Obligations & Contracts 5 October 2026 Reading time 10 min

Current Legal Framework as of 17 November 2026: Italian Supreme Court of Cassation, Civil Division, Order No. 26272 of 5 October 2026 applies Article 1352 of the Civil Code by analogy to the contractually designated delivery channel for express termination, reopening the doctrinal tension with 2026 Labour Division rulings distinguishing contractual form from transmission method.

ABSTRACT

In Order No. 26272 of 5 October 2026, the Italian Supreme Court of Cassation, Civil Division, addresses notices invoking an **express termination clause** via certified email or registered mail where the contract prescribes a specific delivery channel. Setting aside the appellate judgment in a *sale and lease back* dispute, the Court holds that a written clause requiring registered mail with return receipt triggers by analogy the **presumption of essentiality** under Article 1352 of the Italian Civil Code. Even the selection of a designated delivery vehicle forms part of **contractual form** and precludes reliance on general **statutory equivalence** under Article 48 of the Digital Administration Code, absent clear proof of contrary intent. This note examines the 2026 split with the Labour Division, identifies a factual friction in reading a 2022 precedent, and assesses how shifting termination from the invalid email to judicial filing affects **interim lease instalments**.

Key Takeaways

- **Form extended to the agreed delivery channel:** A clause requiring registered mail with return receipt under Article 1456 of the Civil Code triggers the presumption of essentiality by analogy under Article 1352, rendering a notice sent via certified email (PEC) ineffective.
- **Scope of Article 48 CAD:** Statutory equivalence between PEC and registered post between businesses operates only absent an explicit contractual stipulation governing the means of communication.
- **Synchronic split in 2026:** While the commented Order brings the delivery channel within Article 1352 of the Civil Code, the Labour Division separates the contractual form of the instrument from the manner of transmission.
- **Effects on instalments and remand:** A judicial petition under Article 702-bis of the Code of Civil Procedure assuming prior termination does not substitute for the out-of-court notice and in any event shifts the effective date for calculating unpaid instalments.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Obligations & Contracts

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order No. 26272 of 5 October 2026 — Extends the presumption of essentiality u

Legal Principle / Editorial Headnote

Where an express termination clause prescribes registered mail with return receipt, Article 1352 of the Civil Code presumes that delivery channel to be essential and renders certified email (PEC) ineffective, absent proof of contrary contractual intent.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: Under the Italian Civil Code, a notice invoking an express termination clause (*clausola risolutiva espressa*, Article 1456) operates as a unilateral receptive act (*atto unilaterale recettizio*) whose effects take hold upon receipt under Article 1334, while Article 1352 attaches a rebuttable presumption of essentiality to agreed formal stipulations. Although EU digital trust principles and Article 48 of Italy's Digital Administration Code generally equate certified email (PEC) with registered post between undertakings, Supreme Court case law weighs statutory equivalence against party autonomy. **Comparative Common Law Lens:** Whereas English and US contract law enforce compliance with notice clauses through strict contractual construction—distinguishing mandatory from permissive channels without a statutory presumption akin to Article 1352—Italian Civil Law protects the adhering party from the drafter's departure from agreed delivery safeguards. Moreover, unlike Common Law termination elections, an Italian judicial filing presupposing prior termination cannot retroactively cure an invalid notice.

01. INTRODUCTION: ITALIAN SUPREME COURT OF CASSATION, CIVIL DIVISION, ORDER NO. 26272/2026

The tension between immediate contractual termination and formal safeguards reaches a clear turning point in **Italian Supreme Court of Cassation, Civil Division, Order No. 26272 of 5 October 2026**[1]. In commercial dealings, serving an **express termination notice via certified email or registered mail** directly affects asset possession and accruing lease instalments. Choosing the delivery channel is not a technical detail. It operates as a substantive safeguard capable of blocking an eviction claim.

The Supreme Court examines the boundaries of party autonomy where a contract prescribes a designated postal channel to exercise a unilateral termination right. Against the general equivalence of certified digital transmissions stands the force of the **presumption of essentiality** attaching to the agreed form. The resulting rule clarifies the hierarchy between contractual stipulations and statutory rules on electronic communications.

This note analyses the Court's reasoning and compares it with diverging 2026 rulings issued by the Labour Division. The inquiry tests the boundary between contractual form and delivery channel, checks the reading of a 2022 precedent, and assesses the procedural impact on instalments accrued up to the judicial filing.

02. THE SALE AND LEASE BACK DISPUTE AND THE STRENGTH OF ARTICLE 1352 OF THE CIVIL CODE

2.1 — The Contractual Dispute and the Six Grounds of Appeal

At the heart of the dispute lies possession of a property complex in Sant'Agata de' Goti operated as a rehabilitation centre. On 7 November 2006, the lessee sold the property to the leasing company while retaining possession under a linked financial lease structured as a **sale and lease back**. Alleging arrears in **monthly lease instalments** since January 2015, the lessor in extraordinary administration filed a summary petition on 28 July 2016 before the District Court of Naples. It sought a declaration of termination under Article 702-bis of the Code of Civil Procedure and **recovery of possession**[1].

The lessee immediately objected that the termination notice was ineffective because it had been sent via certified email (PEC) rather than by **registered mail with return receipt**. By order of 11 April 2017, the District Court granted the claim and ordered delivery of possession to the absorbing bank. By judgment of 4 December 2023, the Court of Appeal of Naples affirmed. The appellate judges held that **PEC was equivalent** to registered mail and that termination intent had in any event been reiterated in the judicial petition. The losing lessee appealed to the Supreme Court on six grounds.

As a preliminary point, the Supreme Court dismisses the first ground on territorial jurisdiction and upholds the **exclusive forum clause** in Article 27 of the contract. A main appeal by the losing party brings the entire jurisdictional issue before the appellate court, which may substitute its legal rationale without a cross-appeal. The **specific written approval** required under Article 1341 of the Civil Code also stands, as the clauses bore individual headings summarising their content. Finally, upholding the second ground renders moot the challenges concerning the **forfeiture agreement** (*patto commissorio*), usury, termination consequences, and evidentiary requests.

2.2 — Presumption of Essentiality of the Agreed Form and Limits of Article 48 CAD

The dispositive issue turns on Article 20 of the contract, which conditioned termination on a lessor notice sent by registered mail with return receipt. For the Court of Cassation, that clause fixes in writing a **contractual form** governing

a **unilateral receptive act**. Consequently, the presumption established for contracts by Article 1352 of the Civil Code applies by analogy to unilateral termination notices. This requirement does not stop at written form in the abstract. It extends to the specific transmission channel selected by the parties.

The panel therefore faults the appellate court's reliance on Italian Supreme Court of Cassation, Civil Division, Order No. 11808/2022[2]. Equivalence between PEC and registered post rests on the statutory duty of undertakings to maintain a certified email address under Article 16 of Law Decree No. 185/2008 and on Article 48, paragraph 2, of Legislative Decree No. 82/2005. That rule of **statutory equivalence** presupposes the absence of an express agreement on delivery form. Where an express clause exists, the Digital Administration Code yields to the contractual **presumption of essentiality**.

That presumption is not irrebuttable and yields to clear proof of contrary intent drawn from the rules of contractual interpretation under Articles 1362 et seq. of the Civil Code. The **burden of proof** rests on the party claiming that the non-conforming notice is effective. No such evidence appeared in the record. On the contrary, the wording of the clause confirmed the need to guarantee **legal certainty** of date and content for an act carrying severe consequences for the lessee. The provision protects reliance on the agreed form, not merely the factual result of receipt.

Ad abundantiam, the Order also examines **good faith in performance** under Article 1375 of the Civil Code. While reiterating that this general standard constrains unilateral rights, as explored regarding judicial limits on good faith in express termination clauses[D1], the Court rules out any **abuse of rights** by the lessee. It was the professional lessor, having drafted the standard terms, that departed from the very channel it had imposed. Courts cannot therefore set aside a lawful agreement under Article 1322 of the Civil Code in the name of generic functional equivalence.

Agreed Form and Limits of Good Faith under Article 1456 of the Civil Code

The presumption of essentiality under Article 1352 of the Civil Code extends to the specific delivery channel stated in an express termination clause. An adhering party does not breach Article 1375 of the Civil Code by objecting that certified email sent by the professional drafter in breach of contract terms is ineffective.

03. EXPRESS TERMINATION CLAUSES VIA CERTIFIED EMAIL OR REGISTERED MAIL ACROSS DIVERGING PRECEDENTS

3.1 — The Synchronic Split with the Labour Division on Transmission Channels

The approach adopted in Italian Supreme Court of Cassation, Civil Division, Order No. 26272/2026[1] creates a **synchronic tension** within 2026 Supreme Court case law. By bringing the delivery channel within Article 1352 of the Civil Code, the October Order diverges from two earlier Labour Division rulings. The split turns on the boundary between the **contractual form of the act** and mere rules governing how it is transmitted.

In Order No. 1256 of 20 January 2026, the Italian Supreme Court of Cassation, Labour Division[3] reviewed notice of termination of a commercial agency contract sent by **telefax with positive transmission confirmation** instead of the agreed registered post. The Court ruled out Article 1352 of the Civil Code altogether. Assuming written form remained intact, the registered-mail term regulated only the **means of communication** rather than contractual form. The trial

court could therefore find functional equivalence under Article 1335 of the Civil Code where actual receipt went unchallenged.

Similarly, Italian Supreme Court of Cassation, Labour Division, Order No. 13731 of 11 May 2026[4] confirmed that distinction where a dismissal notice was sent to regular email despite Article 79 of the national collective bargaining agreement (*CCNL*). That collective clause specified registered mail with return receipt, hand-delivered registered letter, or PEC. Yet the panel separated the **written drafting** of the dismissal under Article 2 of Law No. 604/1966 from the subsequent stage of delivery. Absent an express invalidity sanction in the **collective agreement**, using a different channel does not invalidate the **employer's termination**.

Decision / Court	Stance	Core Holding
Italian Supreme Court of Cassation, Civil Division, Order No. 26272 of 5 October 2026	Agreed form	Extends the presumption under Article 1352 c.c. to registered mail with return receipt in an express termination clause, rendering PEC ineffective.
Italian Supreme Court of Cassation, Civil Division, Order No. 26488 of 10 October 2024	Aligned	Rejects PEC equivalence for calling a suretyship bound to registered mail with return receipt and bars split-effect timing under Article 1334 c.c.
Italian Supreme Court of Cassation, Civil Division, Order No. 11808 of 12 April 2022	Diverging (CAD)	Upholds a commercial lease termination notice sent via PEC under Article 48 CAD notwithstanding Article 2 of the lease on registered mail.
Italian Supreme Court of Cassation, Labour Division, Order No. 1256 of 20 January 2026	Diverging (Channel)	Excludes registered mail in agency termination from Article 1352 c.c., treating it as a mere communication channel replaceable by fax.
Italian Supreme Court of Cassation, Labour Division, Order No. 13731 of 11 May 2026	Diverging (CCNL)	Separates written form under Article 2 of Law No. 604/1966 from delivery under Article 79 CCNL, upholding dismissal sent to regular email.

3.2 — The Tension in Reading Order No. 11808/2022 and Continuity with Order No. 26488/2024

Equally revealing is the reinterpretation of Italian Supreme Court of Cassation, Civil Division, Order No. 11808/2022[2] advanced in the commented decision. The 2026 Order confines that earlier precedent to cases lacking a **specific stipulation on delivery form**. Inspection of the full judgment, however, reveals a sharp **factual friction**. In that insolvency dispute, the appellant had challenged the termination notice specifically under Article 2 of the lease, which required **registered mail with return receipt**. That clause did exist in fact, yet the Court bypassed it under Article 48 CAD without examining the presumption of Article 1352 of the Civil Code.

> Where a contract binds the power of termination to a designated postal channel, the technological equivalence of certified email yields to the protection of party reliance on the agreed form.

True doctrinal continuity instead connects the 2026 Order to Italian Supreme Court of Cassation, Civil Division, Order No. 26488/2024[5] on **calling a suretyship**. There, the guarantee required registered mail with return receipt within thirty days of 31 December 2014. The creditor dispatched a PEC on the final available day, 30 January 2015, while the postal letter arrived only on 2 February 2015. Dismissing the appeal, the Court denied equivalence under Article 48 CAD in view of the **agreed postal form** and rejected **split-effect service** under Article 149 of the Code of Civil Procedure for substantive acts governed by Article 1334 of the Civil Code.

3.3 — When a Judicial Petition Shifts the Effective Date: Impact on Instalments and Breach

A judicial petition that presupposes termination has already occurred cannot substitute for the **out-of-court declaration** required by Article 1456, second paragraph, of the Civil Code. Where the claim merely seeks a declaratory judgment of termination and an eviction order, no independent election to terminate is present, and service at most shifts the **effective date of termination**.

This ruling dismantles the appellate judgment's fallback rationale and opens decisive fact-finding on remand. If the lease did not end on the date of the invalid PEC, but at earliest upon service of the Article 702-bis petition, the calculation of **instalments accrued** ***medio tempore*** and ancillary sums changes substantially. Shifting the ***dies a quo*** also affects the underlying finding of breach. This revives the lessee's legal interest in the absorbed grounds covering the **forfeiture agreement**, usury, and contractual termination terms. As noted regarding unequivocal intent in implied waiver of an express termination clause[D2], the election to terminate requires a **formally valid act** that cannot be reconstructed through retroactive equivalents.

04. CRITICAL ASSESSMENT AND LITIGATION SAFEGUARDS BETWEEN CONTRACTUAL FORM AND DISPUTE STRATEGY

Systematically, Italian Supreme Court of Cassation, Civil Division, Order No. 26272/2026[1] coherently protects contractual text while leaving unresolved the tension with the Labour Division. Bringing the delivery channel within **contractual form** stops a professional drafter from relaxing during performance the certainty safeguards it wrote itself. Yet the line drawn by Italian Supreme Court of Cassation, Labour Division, Order No. 1256/2026[3] remains sensible where the contract separates written execution from the bare transmission tool. Without uniform coordination, the dividing line continues to depend on construing each individual clause.

Distinguishing the **neighbouring factual scenarios** where the Order's rule does not apply therefore becomes essential. First, it does not govern where no clause fixes the delivery channel, in which case equivalence between PEC and registered post applies between businesses under Italian Supreme Court of Cassation, Civil Division, Order No. 11808/2022[2]. Also outside its scope lies a **dismissal governed** by Article 2 of Law No. 604/1966 and a collective agreement lacking an invalidity sanction, as held in Italian Supreme Court of Cassation, Labour Division, Order No. 13731/2026[4]. Finally, unlike the suretyship time-bars (*decadenza*) addressed in Italian Supreme Court of Cassation, Civil Division, Order No. 26488/2024[5], an invalid termination notice does not extinguish the creditor's substantive right, allowing a fresh notice while default persists.

In civil litigation, the lessee's counsel thus holds a clear **evidentiary shield** rooted in Article 1352 of the Civil Code. Once the clause requiring registered mail with return receipt is placed in evidence, the party that used PEC bears the entire burden of proving contrary intent under Articles 1362 et seq. of the Civil Code. Counsel must also challenge any independent termination effect attributed to the initiating petition and document how the shifted effective date alters instalment balances and payment allocation. Regarding good faith in performance of an express termination clause[D1], the lessor's status as professional drafter forecloses any plea of **abuse of rights** against the debtor.

On the lessor's side, the decision makes verifying the exact clause wording mandatory before suing for repossession. If a notice under Article 1456 of the Civil Code went out solely by PEC despite a postal requirement, re-serving it promptly by registered mail with return receipt fixes the **effective termination date** and avoids disputes over unequivocal termination conduct[D2]. When drafting new standard contracts, parties should state explicitly that PEC and registered mail are interchangeable and secure specific signature under Article 1341, paragraph 2, of the Civil Code. Only that **drafting consistency** prevents appellate remands that undo the entire merits finding.

05. CONCLUSIONS

Italian Supreme Court of Cassation, Civil Division, Order No. 26272/2026[1] reaffirms the primacy of **party autonomy** over notices invoking an **express termination clause via certified email or registered mail**. Consistent with Italian Supreme Court of Cassation, Civil Division, Order No. 26488/2024[5], statutory equivalence under Article 48 CAD is not a mandatory rule capable of overriding a delivery channel fixed in writing. Even between undertakings holding a registered digital domicile, the presumption of Article 1352 of the Civil Code continues to bind above all the drafter of the contract terms.

In civil litigation, however, the divergence with Italian Supreme Court of Cassation, Labour Division, Order No. 1256/2026[3] regarding the boundary between act form and transmission tool remains open. Until that split is resolved, the validity of termination will hinge on the wording of the clause and **interpretive proof** of any agreed departure. Scrutinising agreed form and **effective termination timing** thus becomes essential to prevent a remand over the entire instalment calculation and the finding of default.

References & Authorities Cited

Statutory Provisions

- Italian Civil Code, Articles 1322, 1334, 1341, 1352, 1362, 1375, and 1456 — Freedom of contract, effectiveness of unilateral receptive acts, onerous standard terms, contractual forms, contractual interpretation, good faith in performance, and express termination clause.
- Italian Code of Civil Procedure, Articles 112, 149, 324, 346, and 702-bis — Correspondence between claim and ruling, split-effect service, internal *res judicata*, re-pleading on appeal, and summary cognitive proceedings.
- Legislative Decree No. 82 of 7 March 2005, Article 48 — Digital Administration Code, electronic transmission of digital documents and equivalence to postal notification.

Law Decree No. 185 of 29 November 2008, Article 16 — Statutory duty for businesses to maintain a certified email (PEC) address and electronic communications.

Law No. 604 of 15 July 1966, Article 2 — Statutory written form requirement *ad substantiam* for individual dismissal notices.

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order No. 26272 of 5 October 2026** — Extends the presumption of essentiality under Article 1352 of the Civil Code to registered mail with return receipt agreed for an express termination clause, ruling out PEC equivalence under Article 48 CAD and retroactive substitution by a petition under Article 702-bis c.p.c. Outcome: first ground dismissed, second ground upheld, remaining grounds absorbed; quashed and remanded. Para.: paras. 4.2, 5.2, and 6.

2. **Italian Supreme Court of Cassation, Civil Division, Order No. 11808 of 12 April 2022** — Affirms statutory equivalence between PEC and registered post for commercial lease termination notices between undertakings under Article 48, paragraph 2, of Legislative Decree No. 82/2005 and Article 16 of Law Decree No. 185/2008, notwithstanding Article 2 of the lease and without scrutinising Article 1352 of the Civil Code. Outcome: first two grounds dismissed, third ground upheld, remaining grounds absorbed; quashed and remanded. Para.: paras. 5 and 6.

3. **Italian Supreme Court of Cassation, Labour Division, Order No. 1256 of 20 January 2026** — Excludes Article 1352 of the Civil Code where a commercial agency termination clause regulates the communication channel rather than contractual form, permitting equivalence of a telefax sent with positive delivery report. Outcome: dismissed. Para.: ground 2.

4. **Italian Supreme Court of Cassation, Labour Division, Order No. 13731 of 11 May 2026** — Distinguishes written execution of a dismissal under Article 2 of Law No. 604/1966 from the delivery stage governed by Article 79 of the national collective agreement, ruling out invalidity absent an express collective sanction. Outcome: dismissed. Para.: grounds 2 and 3.

5. **Italian Supreme Court of Cassation, Civil Division, Order No. 26488 of 10 October 2024** — Confirms the ineffectiveness of PEC where a suretyship requires registered mail with return receipt and reiterates that split-effect service rules do not apply to substantive receptive acts under Article 1334 of the Civil Code. Outcome: dismissed. Para.: grounds 1.2 and 3.2.

Legal Scholarship Cited

D1. Metodo Giuridico, *Clausola risolutiva espressa e buona fede: i limiti del giudice* [Express Termination Clauses and Good Faith: Judicial Limits]. Analysis of judicial review limits under good faith in performance (Article 1375 c.c.) when exercising contractual termination rights.

D2. Metodo Giuridico, *Clausola risolutiva espressa: la nuova convocazione è rinuncia tacita* [Express Termination Clauses: Fresh Notarial Summons as Implied Waiver]. Examination of clarity requirements for termination notices under Article 1456 c.c. and the significance of subsequent party conduct. ↑

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